LAW AND PRACTICE
of
MARINE INSURANCE
relating to
COLLISION DAMAGES
and
OTHER LIABILITIES TO THIRD PARTIES

HOWARD B. HURD

THE LAW AND PRACTICE OF MARINE INSURANCE

THE LAW AND PRACTICE OF
MARINE INSURANCE

RELATING TO

COLLISION DAMAGES
AND OTHER LIABILITIES TO THIRD PARTIES

AND

MARITIME CONVENTIONS

ON

LIMITATION OF SHIPOWNERS' LIABILITY
AND OTHER SUBJECTS

BY

HOWARD B. HURD

MEMBER AND PAST CHAIRMAN OF THE ASSOCIATION OF AVERAGE ADJUSTERS
MEMBER OF THE INTERNATIONAL MARITIME COMMITTEE

AUTHOR OF
"MARINE INSURANCE—FUNDAMENTAL PRINCIPLES OF THE RELATIONSHIPS
BETWEEN ASSURED, INSURANCE BROKER AND INSURER"

LONDON
EFFINGHAM WILSON
16, COPTHALL AVENUE, E.C.2
1930

Made and printed by Adlard & Son, Limited,
21, Hart Street, London, W.C. 1,
England.

CONTENTS

PAGE

PREFACE vii

LIST OF STATUTES ix

LIST OF CASES xi

INTRODUCTION

LIABILITIES IN RESPECT OF MARITIME PROPERTY GENERALLY AND GENERAL PRINCIPLES APPLICABLE TO INSURANCES AGAINST LIABILITIES TO THIRD PARTIES 1

PART I

COLLISION AND OTHER LIABILITIES

CHAPTER

I. ADMIRALTY JURISDICTION AND COURSE OF PROCEDURE IN COLLISION ACTIONS 11

II. DAMAGE BY COLLISION AND LIABILITIES ARISING UNDER STATUTORY POWERS 20

III. RULE AS TO DIVISION OF LOSS WHERE BOTH VESSELS ARE TO BLAME FOR COLLISION 28

IV. STATUTORY LIMITATION OF LIABILITY OF SHIPOWNERS AND OTHERS 40

V. MEASURE OF DAMAGES 49

PART II

INSURANCE AGAINST LIABILITIES TO THIRD PARTIES

VI. INSURANCE AGAINST COLLISION LIABILITIES . . 71

VII. INSTITUTE COLLISION CLAUSE 76

VIII. ADJUSTMENT OF CLAIMS UNDER THE COLLISION CLAUSE 90

IX. PROTECTION AND INDEMNITY CLAUSE . . . 106

X. MISCELLANEOUS INSURANCES AGAINST LIABILITIES TO THIRD PARTIES 114

PART III

MARITIME CONVENTIONS

XI. Introductory 125
XII. Limitation of Shipowners' Liability . . . 134
XIII. Maritime Mortgages and Liens 139
XIV. Immunity of State-owned Ships 143

Appendix. Extracts from Statutes 147

Index 169

PREFACE

THE Law and Practice of Marine Insurance relating to Collision Damages and other Liabilities to Third Parties formed the subject of a course of lectures delivered in Glasgow during the winter of 1929–1930 under the auspices of the Glasgow Underwriters' Association Students' Society.

In response to suggestions from various quarters the Lectures are now published, in the hope that they may be of assistance to those who are either directly or indirectly interested in Marine Insurance.

The question of the nature and extent of collision and other liabilities has only been dealt with so far as affecting the question of insurance against liabilities to third parties, and the book is not intended to be one on collisions at sea, a subject on which there are several standard works.

The Maritime Conventions have been introduced as they have an important bearing on the branch of marine insurance law and practice dealt with in the Lectures, and in the chapters dealing with the Conventions use has been made of the articles on the subject which were written by the author for *Lloyd's List* and *The Shipping World* and appeared in those journals.

If legislative effect is given to the Convention on the Limitation of Shipowners' Liability in other countries in addition to Belgium where it has already been enacted, it would be an advantage for it to be supplemented by an international code of the law of damages arising from collisions at sea, which would remove the differences between the laws and practice of different maritime countries as regards the assessment of damages. The basis adopted in this country is summarized in Chapter V, and this important question is ripe for consideration by shipowners and traders of all countries,

the more especially as some of the principles involved are applicable to claims arising under bills of lading and other commercial contracts.

A study of the law and practice of Marine Insurance is now encouraged by various Students' Societies and Commercial Colleges throughout the country, and as those for whom this book is primarily intended may not have ready access to the Statutes referred to in the book, a selection of the relevant sections of various Acts of Parliament appears in the Appendix.

H. B. H.

Royal Exchange Buildings,
Glasgow
July, 1930.

LIST OF STATUTES

		PAGE
7 Geo. II, c. 15.	Responsibility of Shipowners Act, 1734	41
26 Geo. III, c. 86.	Merchant Shipping Act, 1787	41
53 Geo. III, c. 159.	Responsibility of Shipowners Act, 1814	41
3 & 4 Vict., c. 65.	Admiralty Court Act, 1840	11, 12
9 & 10 Vict., c. 93.	Lord Campbell's Act, 1846	25
10 & 11 Vict., c. 27.	Harbours, Docks and Piers Clauses Act, 1847	27, 47, 52, 111, 159
17 & 18 Vict., c. 104.	Merchant Shipping Act, 1854	41
24 & 25 Vict., c. 10.	Admiralty Court Act, 1861	11, 12
25 & 26 Vict., c. 63.	Merchant Shipping Amendment Act, 1862	41
28 & 29 Vict., c. 125.	Dockyard Ports Regulation Act, 1865	27, 159
36 & 37 Vict., c. 66.	Supreme Court of Judicature Act, 1873	11, 12, 30
40 & 41 Vict., c. 16.	Removal of Wreck Act, 1877	27
57 & 58 Vict., c. 60.	Merchant Shipping Act, 1894	41, 130
	s. 77	43
	s. 158	53
	s. 419	26, 32
	s. 502	115, 118, 149
	s. 503	115, 118, 149
	s. 504	150
	s. 506	3, 151
	s. 530/4	27, 151
	s. 633	23, 151
	s. 742	1, 151
61 & 62 Vict., c. 14.	Merchant Shipping (Liability of Shipowners) Act, 1898	42, 152
63 & 64 Vict., c. 32.	Merchant Shipping (Liability of Shipowners and Others) Act, 1900	41, 47, 48, 122, 140, 152
6 Edw. VII, c. 41.	Marine Insurance Act, 1906	
	s. 3	2, 119, 147
	s. 5	147
	s. 14	139, 148
	s. 50	139, 148
	s. 63	7, 148
	s. 74	2, 148
	s. 79	7, 148
	Rule 15	1, 149

		PAGE
6 Edw. VII, c. 48.	Merchant Shipping Act, 1906	
	s. 42	53
	s. 69	43, 153
	s. 70	42, 154
	s. 71	3, 42, 78, 154
1 & 2 Geo. V, c. 57.	Maritime Conventions Act, 1911	8, 22, 31 39, 46, 73, 90, 126
	s. 1	31, 32, 33, 155
	s. 2	33, 156
	s. 3	33, 156
	s. 4	26, 156
	s. 5	25, 33, 157
	s. 6	157
	s. 7	157
	s. 8	157
	s. 9	23, 78, 158
2 & 3 Geo. V, c. 31.	Pilotage Act, 1913	23, 158
6 & 7 Geo. V, c. 41.	Merchant Shipping (Salvage) Act, 1916	143, 154
10 & 11 Geo. V, c. 81.	Administration of Justice Act, 1920	
	s. 5	12
11 & 12 Geo. V, c. 28.	Merchant Shipping Act, 1921	1, 154
14 & 15 Geo. V, c. 22.	Carriage of Goods by Sea Act, 1924	8, 47, 115, 116, 126, 160
15 & 16 Geo. V, c. 42.	Merchant Shipping (International Labour Conventions) Act, 1925	53
15 & 16 Geo. V, c. 49.	Supreme Court of Judicature (Consolidation) Act, 1925	
	s. 22	12, 165

LIST OF CASES

A.

PAGE

Acanthus, The 56, 60
(1902) P. 17; 71 L.J. (P.) 14; 85 L.T. 696; 18 T.L.R. 160; 9 Asp. M.C. 276.

Achlibster, The 62
2 Ll. L. Rep. 90.

Adelaide Steamship Co. *v.* The Crown (The Warilda) . 88
(1926) A.C. 172; 134 L.T. 258; 42 T.L.R. 180; 16 Asp. M.C. 579; 31 Com. Cas. 145; 23 Ll. L. Rep. 259.

Alison & Co. *v.* Wallsend Slipway Co. 121
27 Ll. L. Rep. 285.

Anchor Line *v.* Dundee Harbour Trustees 24
(1922) S.C. (H.L.) 79; 38 T.L.R. 299; 10 Ll. L. Rep. 47.

Argentino, The 57
(1888) 13 P.D. 191; (1889) A.C. 519; 61 L.T. 706; 59 L.J. (P.) 17; 6 Asp. M.C. 433.

B.

Baron Vernon, The 53
27 Ll. L. Rep. 33; 29 Ll. L. Rep. 253; 30 Ll. L. Rep. 132.

Bennett Steamship Co. *v.* Hull Mutual Steamship Protecting & Indemnity Association 81
(1914) 3 K.B. 57; 83 L.J. (K.B.) 1179; 111 L.T. 484; 30 T.L.R. 515; 12 Asp. M.C. 522; 19 Com. Cas. 353.

Blythe *v.* Birmingham 22
(1856) 11 Exch. 781; 25 L.J. (Ex.) 213.

Boston Fruit Co. *v.* British & Foreign Marine Insurance Co. (The Barnstaple) 78
(1906) A.C. 336; 75 L.J. (K.B.) 537; 94 L.T. 806; 22 T.L.R. 571; 10 Asp. M.C. 260; 11 Com. Cas. 196.

Burger *v.* Indemnity Mutual Marine Assurance Co. . . 74
(1900) 2 Q.B. 348; 69 L.J. (Q.B.) 838; 82 L.T. 831; 16 T.L.R. 456; 9 Asp. M.C. 85; 5 Com. Cas. 315.

C.

Calderon, The 61
Marsden's Measure of Damages in Maritime Collisions, 3rd Ed. p. 168.

Carron Co. *v.* Cayzer, Irvine & Co. 18
(1885) 13 R. 114.

PAGE

Chandler *v.* Blogg 81
(1898) 1 Q.B. 32; 67 L.J. (Q.B.) 336; 77 L.T. 524; 14 T.L.R. 66; 8 Asp. M.C. 349; 3 Com. Cas. 18.

Chapman *v.* Fisher 84
20 T.L.R. 319.

Chekiang, The 60
(1926) A.C. 637; 95 L.J. (P.) 119; 135 L.T. 450; 42 T.L.R. 634; 17 Asp. M.C. 74; 25 Ll. L. Rep. 173.

City of Lincoln, The 50
(1889) 15 P.D. 15; 59 L.J. (P.) 1; 62 L.T. 49; 6 Asp. M.C. 475.

Clarence, The 49
3 W. Rob. 283.

Clyde Navigation Trustees *v.* Bowring Steamship Co. (The Ronda) 51, 52
34 Ll. L. Rep. 319.

Coey *v.* Smith 74
22 Ct. of Sess. Cas. (2nd Ser.) 955.

Colinton, The 61
35 Ll. L. Rep. 136.

Crooks *v.* Allan 141
(1879) 5 Q.B.D. 38; 49 L.J. (Q.B.) 201; 41 L.T. 800; 4 Asp. M.C. 216.

Crowley v. Cohen 4
1 L.J. (K.B.) 158.

Cunard Steamship Co. *v.* Marten 5
(1903) 2 K.B. 511; 72 L.J. (K.B.) 754; 89 L.T. 152; 19 T.L.R. 634; 9 Asp. M.C. 452; 9 Com. Cas. 9.

Currie *v.* McKnight 30
(1897) A.C. 97; 66 L.J. (P.C.) 19; 75 L.T. 457; 8 Asp. M.C. 193.

D.

De Vaux *v.* Salvador 3, 71, 88
5 L.J. (K.B.) 134; 43 R.R. 374; 4 A. & E. 420; 6 N. & M. 713; 1 H. & W. 751.

Devonshire, Owners of, *v.* Owners of barge Leslie 24
(1912) A.C. 634; 81 L.J. (P.) 94; 107 L.T. 179; 28 T.L.R. 551; 12 Asp. M.C. 210.

Dobson *v.* Wilson 140
3 Camp. 479; 14 R.R. 817.

Drumlanrig, The 30
(1911) A.C. 16; 80 L.J. (P.) 9; 103 L.T. 773; 27 T.L.R. 146; 11 Asp. M.C. 520.

Dunn *v.* Bucknall Brothers 63
(1902) 2 K.B. 614; 71 L.J. (K.B.) 963; 87 L.T. 497; 9 Asp. M.C. 336; 8 Com. Cas. 33.

E.

PAGE

Ellerman Lines *v.* Dundee Harbour Trustees 24
(1922) S.C. (H.L.) 79; 38 T.L.R. 299; 10 Ll. L. Rep. 47.

Engineer, The 84
(1898) A.C. 382; 67 L.J. (P.) 61; 78 L.T. 473; 14 T.L.R. 369; 8 Asp. M.C. 401.

Excelsior Co. *v.* Smith 74
2 L.T. 90 (Sc.).

F.

France, Fenwick & Co. *v.* Merchants' Marine Insurance Co. . 78
(1915) 3 K.B. 290; 84 L.J. (K.B.) 1905; 113 L.T. 299; 31 T.L.R. 321; 20 Com. Cas. 227.

G.

Grayson, H. & C., *v.* The City of Edinburgh. 48
(1921) P. 274; 90 L.J. (P.) 304; 125 L.T. 375; 37 T.L.R. 468; 15 Asp. M.C. 234; 25 Com. Cas. 190; 2 Ll. L. Rep. 242.

Greta Holme, The 59
(1897) A.C. 596; 66 L.J. (P.) 166; 77 L.T. 231; 8 Asp. M.C. 317.

H.

Harmonides, The 51
(1903) P. 1; 72 L.J. (P.) 9; 87 L.T. 448; 19 T.L.R. 37; 9 Asp. M.C. 354.

Hauk, The 61
30 Ll. L. Rep. 32.

Haversham Grange, The 56, 60
(1905) P. 307; 74 L.J. (P.) 115; 93 L.T. 733; 21 T.L.R. 628; 10 Asp. M.C. 156.

Hay *v.* Le Neve 30
2 Shaw's Sc. App. Cas. 395.

Holman, John & Sons, *v.* Merchants' Marine Insurance Co. . 6
(1919) 1 K.B. 383; 88 L.J. (K.B.) 435; 120 L.T. 478; 35 T.L.R. 138; 14 Asp. M.C. 433; 24 Com. Cas. 102.

J.

Joyce *v.* Kennard 4
L.R. 7 Q.B. 78; 41 L.J. (Q.B.) 17; 25 L.T. 932; 1 Asp. M.C. 194.

K.

PAGE

Kafue, The 50
(1920) P. 15 (N.); 123 L.T. 559; 15 Asp. M.C. 48.

Kingsway, The 55, 59
(1918) P. 344; 87 L.J. (P.) 162; 122 L.T. 651; 14 Asp. M.C. 590.

L.

Laird Line *v.* Clan Line (The Rowan) 18, 62, 63
24 Ll. L. Rep. 238, 325; 25 Ll. L. Rep. 170.

London Steamship Owners' Mutual Insurance Association *v.* Grampian Steamship Co. (The Balnacraig) . . 31, 73
(1890) 24 Q.B.D. 663; 59 L.J. (Q.B.) 549; 62 L.T. 784; 6 Asp. M.C. 506.

M.

McCowan *v.* Baine (The Niobe) 80
(1891) A.C. 401; 65 L.T. 502; 7 Asp. M.C. 89; 17 Ct. of Session Cas. (4th Ser.) 1016.

Margetts *v.* Ocean Accident & Guarantee Corporation . . 81
(1901) 2 K.B. 792; 70 L.J. (K.B.) 762; 85 L.T. 94; 17 T.L.R. 538; 9 Asp. M.C. 217.

Marigola, The 50
34 Ll. L. Rep. 217.

Marine Insurance Co. *v.* China Mutual Steamship Co. (The Vancouver) 56
(1886) 11 A.C. 573; 56 L.J. (Q.B.) 100; 55 L.T. 491; 6 Asp. M.C. 68.

Milan, The 30
31 L.J. (P.) 105; 5 L.T. 590; Lush. 388.

Minnetonka, The 62
(1905) P. 206; 74 L.J. (P.) 97; 93 L.T. 581; 21 T.L.R. 407; 10 Asp. M.C. 142.

Moliere, The. 56
(1925) P. 27; 94 L.J. (P.) 28; 132 L.T. 733; 41 T.L.R. 154; 16 Asp. M.C. 407; 20 Ll. L. Rep. 101.

Mostyn, The 27, 48
135 L.T. 693; 42 T.L.R. 710; 17 Asp. M.C. 367; 25 Ll. L. Rep. 327.

Munroe, The 80
(1893) P. 248; 70 L.T. 246; 7 Asp. M.C. 407.

N.

Nobel's Explosives Co. *v.* Rea 141
2 Com. Cas. 293.

Normanstar, The 61
(1929) P. 283; 98 L.J. (P.) 152; 141 L.T. 463; 45 T.L.R. 554; 34 Ll. L. Rep. 183.

PAGE

North Britain, The 83
(1894) P. 77 ; 63 L.J. (P.) 33 ; 70 L.T. 210 ; 7 Asp. M.C. 413.
North Star, The 140
29 L.J. (P.) 73 ; 2 L.T. 216 ; Lush. 45.
Norway, The 140
13 L.T. 50 ; Br. & Lush. 404; 2 Mar. L. Cas. 254.

O.

Orient City, The (St. Just Steamship Co. *v.* Hartlepool Port & Harbour Commissioners) 24
34 Ll. L. Rep. 344.

P.

Pacuare, The 52
(1912) P. 179 ; 81 L.J. (P.) 143 ; 107 L.T. 252 ; 12 Asp. M.C. 222.
Parana, The 63
(1877) P.D. 118 ; 36 L.T. 388 ; 3 Asp. M.C. 399.

R.

Richardson *v.* Burrows 80
Lowndes Mar. Ins. (2nd ed.) p. 199.
River Wear Commissioners *v.* Adamson 27
(1877) 2 A.C. 743 ; 47 L.J. (Q.B.) 193 ; 37 L.T. 543 ; 3 Asp. M.C. 521.
Rodocanachi *v.* Milburn 61
(1886) 18 Q.B.D. 67 ; 56 L.J. (Q.B.) 202 ; 56 L.T. 594 ; 6 Asp. M.C. 100.
Ruabon Steamship Co. *v.* London Assurance (The Ruabon) . 56
(1900) A.C. 6 ; 69 L.J. (Q.B.) 86 ; 81 L.T. 585 ; 16 T.L.R. 90 ; 9 Asp. M.C. 2 ; 5 Com. Cas. 71.
Ruapehu, The 48
(1929) P. 305 ; 98 L.J. (P.) 167 ; 45 T.L.R. 657 ; 17 Asp. M.C. 270 ; 35 Com. Cas. 86 ; 34 Ll. L. Rep. 402.

S.

Sheaf Steam Shipping Co. *v.* Compania Trasmediterranea (The Sheaf Lance) 17
36 Ll. L. Rep. 197.
Simpson *v.* Thompson 75
(1877) 3 A.C. 279 ; 38 L.T. 1 ; 3 Asp. M.C. 567 ; 4 Sc. Cas. (4th Ser.) 177.
Société du Gaz de Paris *v.* Société Anon. de Nav. les Armateurs Français (The Depute Emile Driant) 17
23 Ll. L. Rep. 209.

PAGE

Steven Line *v.* Nederlandsch-Amerikaansche Stoom. Maats (The Ezardian) 17
17 Ll. L. Rep. 38.

Stoomvaart Maats. Nederland *v.* Peninsular & Oriental Steam Navigation Co. (The Khedive) 31, 73
(1882) 7 A.C. 795; 52 L.J. (P.) 1; 47 L.T. 198; 4 Asp. M.C. 567.

Susquehanna, The 60
(1926) A.C. 655; 95 L.J. (P.) 128; 135 L.T. 456; 42 T.L.R. 639; 17 Asp. M.C. 81; 25 Ll. L. Rep. 205.

T.

Tamarac, The 60
Marsden's Measure of Damages in Maritime Collisions, 3rd Ed. p. 172.

Taylor *v.* Dewar 74
33 L.J. (Q.B.) 141; 10 L.T. 267; 5 B. & S. 58.

Thomson *v.* Reynolds 81
26 L.J. (Q.B.) 93.

Thuringia, The 50
41 L.J. (P.) 44; 26 L.T. 446; 1 Asp. M.C. 283.

U.

Union Marine Insurance Co. *v.* Borwick 80
(1895) 2 Q.B. 279; 64 L.J. (Q.B.) 679; 73 L.T. 156; 8 Asp. M.C. 71; 1 Com. Cas. 87.

V.

Vera Cruz, The 25
(1884) 9 P.D. 96.

Vitruvia Steamship Co. *v.* Ropner Shipping Co. 61
(1925) S.C. (H.L.) 1; 21 Ll. L. Rep. 280.

Volturno, The 64
(1921) 2 A.C. 544; 90 L.J. (P.) 385; 126 L.T. 1; 37 T.L.R. 969; 15 Asp. M.C. 374; 27 Com. Cas. 46; 8 Ll. L. Rep. 449.

X.

Xenos *v.* Fox 3, 6, 72
(1868) L.R. 4 C.P. 665; 38 L.J. (C.P.) 351; 19 L.T. 84.

INTRODUCTION

Liabilities in respect of maritime property generally.—Statutory permission to insure against them.—General principles applicable to such insurances.

THE owners of a ship, in addition to sustaining a pecuniary loss by reason of the loss of or damage to the ship, may also incur liabilities to other parties for damage caused by her. In like manner, those who are interested in or responsible for a ship, other than the owners, may also incur liabilities to other parties by reason of their interest or responsibility. Liabilities in respect of maritime property generally.

Whilst the ship herself is commonly referred to as being liable or in fault or to blame for such damage, she is only the instrument of the damage, and that is merely a figurative way of expressing the liability of the owners of the ship or those who are interested in or responsible for the ship.

The words "ship" and "vessel" are frequently used to denote the same kind of object. Strictly speaking, a ship is one which has a bowsprit and three masts and is square-rigged, but the word is more frequently used in a generic sense as denoting any sea-going vessel; it does not include a lighter or barge, but according to the Marine Insurance Act, 1906, it includes a steamship. The word "vessel" is a wider term and denotes any structure made to float upon the water for purposes of transport, commerce or war, whether propelled by wind, steam or oars. It has been held to include a ship, a lighter and a barge, but a gas float and a floating landing stage have both been held not to come within the meaning of the term "vessel." Meaning of words "ship" and "vessel."

For the purposes of the Merchant Shipping Act, 1894, the term "ship" includes "every description of vessel used in navigation "not propelled by oars," and the term "vessel" includes "any ship "or boat, or any other description of vessel used in navigation," and by the Merchant Shipping Act, 1921, the expression "ship" was extended to include "every description of lighter, barge, or "like vessel used in navigation in Great Britain, however propelled."

Purpose of marine insurance.

Marine insurance is the means by which those who own or are interested in or responsible for a ship seek to protect themselves in respect of loss of or damage to her and against liabilities to other parties falling upon them arising out of their ownership, interest or responsibility. By an ordinary policy of marine insurance on a ship the assured protects himself against such loss or damage caused by maritime perils, but such a policy does not protect the assured against liabilities to other parties; that is a separate and distinct form of insurance.

Statutory authority to insure against liabilities in respect of maritime property.

Subject to the general reservation that a person cannot insure against his own wilful fault or misconduct as being contrary to public policy, the law permits a person to insure against his liabilities in respect of maritime property.

According to the Marine Insurance Act, 1906, Section 3, a policy of marine insurance may be effected where " any liability to a third " party may be incurred by the owner of, or other person interested " in or responsible for, insurable property, by reason of maritime " perils."

The restriction of the legality of such an insurance to " maritime " perils " is modified by the extension of the meaning of the term " maritime perils " to cover not only perils of the seas but any other perils which may be mentioned in the policy. The actual wording of this section of the Act, which follows this permissive clause, is as follows: " ' Maritime perils ' means the perils conse- " quent on, or incidental to, the navigation of the seas, that is to " say, perils of the seas, fire, war perils, pirates, rovers, thieves, " captures, seizures, restraints, and detainments of princes and " peoples, jettisons, barratry, and any other perils, either of the like " kind, or which may be designated by the policy."

The extensive nature of the permission to insure against liabilities granted by the Act is shown by Section 74, which reads: " Where the assured has effected an insurance in express terms " against any liability to a third party, the measure of indemnity, " subject to any express provision in the policy, is the amount " paid or payable by him to such third party in respect of such " liability."

This extension of the scope of insurance against liabilities to third parties is of importance, having regard to the frequency with which insurances are effected against liabilities arising otherwise than from perils of the seas, as for example a shipbuilder's guarantee respecting good workmanship and material in the construction of a ship.

By the Merchant Shipping Act, 1894, in Part VIII, which deals with the limitation of shipowner's liability, a shipowner is authorized to insure against the liability falling upon him by reason of the improper navigation of his ship and in respect of which the extent of his liability is limited according to the Act. Section 506 is as follows: "An insurance effected against the happening, without "the owner's actual fault or privity, of any or all of the events in "respect of which the liability of owners is limited under this Part "of this Act shall not be invalid by reason of the nature of the risk."

This enactment is extended to charterers by demise by Section 71 of the Merchant Shipping Act, 1906, so that a charterer who provides the crew and is thereby liable for damages arising out of the negligent navigation of the ship by the crew is also authorized to insure against such a liability.

An ordinary marine insurance policy on property does not cover liabilities in respect thereof.

An ordinary policy of marine insurance on property does not cover the liability of the owner of it to another party in respect of any damage the latter may sustain. For example, in the case of *De Vaux* v. *Salvador* (1836), where a ship came into collision with and damaged another ship, and the owner of the wrong-doing ship sought to recover the damages he had been called upon to pay from the underwriters on the policy on his ship as a loss caused by perils of the seas, the Court held that he was not entitled to do so on the ground that the obligation to pay the sum in question was neither "a necessary nor a proximate effect of the perils of the "seas, but (one) growing out of an arbitrary provision of the laws "of nations."

An insurance against liabilities is a separate contract.

Whether the insurance against liabilities to third parties is added to an ordinary policy or is embodied in a separate policy, it is a distinct engagement. "It is in each case a special contract, "very different from the contract of insurance in its ordinary "form; and the liability under it does not depend upon the ordinary "perils covered by the policy, but upon the special matters men-"tioned in the clause itself." (*Xenos* v. *Fox*, 1868.)

Classification of liabilities in respect of maritime property.

Liabilities in respect of the ownership of or interest in or responsibility for a ship may be divided into three classes; namely, those arising from:

1. Torts;
2. Certain statutory or local regulations; and
3. Breach of contract.

A tort is a wrong or injury, and an example in maritime law is the damage done by one ship to another ship. As regards the second class there are certain statutory and local regulations

relating to harbours and docks, which may involve a shipowner in liability for damage to such property and the cost of removing the wreck of his ship in such areas. Instances of breach of contract are those arising under bills of lading, such as unauthorized deviation and carrying cargo on deck which was contracted to be carried under deck, also the non-fulfilment of the terms of a building contract, whereby shipbuilders or marine engineers guarantee good workmanship and material.

General principles applicable to insurances against liabilities in respect of maritime property.

When an insurance is effected against a liability, a special form of insurance is required. If the insurance is against a loss or injury caused by the ship, the liability against which it is intended to insure should be expressly stated in the policy so as to avoid differences arising, especially as regards indirect losses and consequential damages, as is done in the Collision Clause, which confines the right of recovery thereunder to damage caused by the contact of the ship with another ship and excludes damage to stationary property and loss of life or personal injury consequent on the collision.

Where the insurance is in respect of liabilities to third parties in respect of the custody of some property, it is expedient that the policy should be so expressed as to denote that it is not an insurance on the property, but against liabilities arising out of an interest in or responsibility for the property. For example, a lighterman may desire to effect an insurance for a certain amount against his liability to the owners of the cargo carried in his lighters, but if the policy is expressed as " on goods," and there is no indication that it is really against liability, the ordinary rules of construction have to be applied ; and in the event of any of the goods being lost or damaged for which the lighterman is liable, in order to ascertain whether he is fully insured, it is necessary to determine whether the sum insured is sufficient to cover the value of all the goods on board the various lighters at the time the particular loss or damage occurred, whereas if the policy clearly specifies that it is an insurance against liability the lighterman would be able to recover any sum he was called upon to pay up to the amount insured, whether or not at the time of the loss or damage the value of all the goods on board the various lighters was more or less than the sum insured. This distinction is clearly shown by comparing the case of *Crowley* v. *Cohen* (1832) with that of *Joyce* v. *Kennard* (1871). In each case the insurance was intended to cover the interest of lightermen as carriers in the goods laden on their lighters. In the first case, the policy was stated merely to be on goods, and was construed

as such, whilst in the second case, in addition to stating that it was on goods, the policy contained a clause to cover all losses and damages up to a specified amount for which the lightermen might be liable to the owners of the goods, and it was construed as a policy against liabilities.

In the same way, a shipowner may divert one of his steamers with cargo on board and thereby render himself liable to the owners of the cargo for so doing by reason of an unauthorized deviation. If he effects an insurance in respect of that liability it should be described as such rather than " on goods," and in the event of any claim arising he could recover any sum he was liable to pay to the cargo owners up to the amount insured, notwithstanding that the latter amount was less than the total value of all the goods on board.

Although a general policy " on goods " is sufficient to cover the interest of the shipowners or carriers in the goods entrusted to their care, it only protects them against claims they may have to pay for loss or damage arising from perils of the seas as covered by an ordinary policy on goods, and the policy is subject to the rules of construction applicable to such an insurance as regards the amount insured and other matters. Such a policy does not fully protect the shipowners or carriers, and an insurance intended to cover their liability to third parties should be expressly stated. Thus, in the case of *Cunard Steamship Co.* v. *Marten* (1903), Bigham, J., and the Court of Appeal held that an insurance by shipowners " against liability of any kind to owners of cargo up to £20,000 " was not an insurance on the cargo, but a contract to indemnify them in full up to the amount of £20,000 in respect of their liability as carriers and covered that liability up to the amount insured.

On the other hand, an increased value policy on hull and machinery contained a clause that the insurance was " against the " risks of total, constructive or compromised total loss as settled " on hull and machinery policies, but including as per clause " attached liability for general average, salvage charges, sue and " labour expenses, or claims under the running down clause in " excess of the declared value in hull and machinery policies." The contributory value of the ship to a salvage award was £62,000, and to general average expenditure was £53,007, as compared with the insured value of £39,000. The assured claimed that the policy covered the excess contributions up to the amount insured under the increased value policy, but the Court held that the policy was on the property, with the ordinary ancillary clauses, and was not a contract of indemnity against liability, and that the basis on which

the underwriters were liable to contribute to the excess contributions was that they should pay a part thereof in the proportion that the amount insured by them bore to the total excess contributory values of the vessel. (*John Holman & Sons* v. *Merchants' Marine Insurance Co.*, 1919.)

These cases emphasize the desirability of clearly expressing the intention of the parties, if the purpose of the insurance is that it is one covering liabilities and that the assured shall be entitled to recover a claim in respect of such liabilities up to the amount insured.

Insurance against liabilities for breach of contract.

Where the insurance is against liabilities arising from a breach of contract it is expedient that the particular circumstances should be mentioned, or the terms of the contract should by quotation or reference be incorporated in the policy, as is usually done in the case of insurances covering shipbuilders' guarantee risks, where the guarantee clause is usually set out in the policy.

Special provision as regards costs.

Another general principle to be borne in mind is that, in the absence of a special provision to that effect, a policy against liabilities to third parties does not render the underwriters liable for the costs incurred by the assured in defending a claim made upon him. In the case of *Xenos* v. *Fox* (1868) the owners of a ship incurred costs in successfully defending a claim brought against them for damage to another ship which was in collision with their ship. The owners sought to recover these costs from the underwriters on the policy on the ship with the old form of Collision Clause attached, which did not contain any provision as regards costs, on the ground that had they not been incurred there would have been a good claim against the underwriters under the Collision Clause. The Court decided against this claim, and adhered to the special and independent character of the clause that it only covered the specific liabilities referred to therein. In any insurance against liabilities to third parties it is consequently expedient to insert a provision respecting the recovery of costs incurred in defending a claim made upon the assured in respect of the risks covered.

No community of contract between the underwriters and the third party.

It has also to be borne in mind that there is no community of contract between the underwriter on a policy covering the liability of the assured to a third party and that third party as the person who has suffered the loss. The contract of insurance is solely between the assured and the underwriter, whereby the latter, subject to the terms of the policy, agrees to indemnify the assured against the liability he may incur to the third party. It follows as

a matter of course that the third party has no direct claim against the underwriter, and the underwriter is only liable to the assured where the assured is liable to the third party.

Effect of abandonment and right of subrogation.

There are two important principles of marine insurance law which come into operation where liabilities in respect of maritime property are concerned—those of abandonment and subrogation. Abandonment applies to cases of total loss, and subrogation is an equitable arrangement incidental to all contracts of indemnity and applies to total and partial losses.

In the case of total loss the insurer by abandonment becomes entitled to take over what remains of the property insured and all proprietary rights incidental thereto. (Marine Insurance Act, 1906, section 63(1).) In the case of partial loss the property remains in the hands of the assured, who is indemnified in respect of the damage sustained. By subrogation the insurer becomes entitled to the benefit of claims and other remedies against third parties which have or might have accrued to the assured. (Marine Insurance Act, 1906, section 79 (1) and (2).)

Where the insurers are liable to indemnify the assured in respect of loss of or damage to maritime property and they elect to institute proceedings against some third party responsible for the loss or damage, the proceedings require to be taken in the assured's name but for the insurers' benefit and at their expense, and any amount recovered from the third party is held by the assured as trustee for the insurers.

For example, if ship or goods are damaged by collision, the insurers on indemnifying the assured become entitled to receive any amount recovered from the owner of the wrong-doing ship, so far as they have indemnified the assured in respect thereof.

In the case of settlement for total loss the insurers are not bound to take over whatever remains in the property insured ; they only become entitled to do so, and they sometimes refrain from doing so if the assumption of proprietary rights would involve them in a liability, such as the liability to a port authority to remove the wreck of the vessel.

Classification of subjects dealt with in this book.

Having referred to the main general principles governing insurances against liabilities to third parties, it is desirable to consider the nature and extent of the various liabilities to which the owners of or other persons interested in or responsible for ships and maritime property are subject in order to better understand the requirements of the different forms of insurance to cover such liabilities. In the first place, however, as many of these liabilities are

determined according to Admiralty law, it will be well briefly to describe Admiralty jurisdiction.

Legislation respecting liabilities arising in connection with maritime property affects the nature of the insurances effected against such liabilities, such as the Maritime Conventions Act, 1911, and the Convention on Bills of Lading which was the basis of the Carriage of Goods by Sea Act, 1924. Other legislation is contemplated respecting the Limitation of Shipowners' Liability, Maritime Mortgages and Liens, and Immunity of State-owned Ships, and it will be well briefly to consider the Conventions dealing with those matters.

The various subjects dealt with in this book consequently fall to be divided into three parts, as follows :

Part I deals with Admiralty jurisdiction and collision and other liabilities.

Part II is devoted to the question of the various types of insurance against such liabilities.

Part III contains a brief account of the legislation based on International Conventions, which has already been passed in this and other countries, and further legislation which is contemplated respecting other Maritime Conventions.

PART I

COLLISION AND OTHER LIABILITIES

CHAPTER I

Admiralty Jurisdiction and Course of Procedure in Collision Actions

Origin of Admiralty jurisdiction.—Admiralty jurisdiction in England and Wales.—Proceedings *in personam* and *in rem*.—Development of maritime liens.—Admiralty jurisdiction in Scotland.—Arrestment to found jurisdiction and upon the dependence of the action.—Assessment of damages in England and Scotland.—Procedure in collision actions.

Origin of Admiralty jurisdiction.

As far back as the Middle Ages maritime states exercised jurisdiction with respect to claims arising from collisions at sea and other matters connected with ships by arresting the defendant's property or person in order to compel him to enter an appearance to the action and provide security for the amount of the claim, notwithstanding that he might belong to another country. In course of time the procedure by arrest of the person fell into disuse, and that by arrest of the defendant's property became restricted in most countries to the particular property in respect of which the claim arose.

Admiralty jurisdiction in England and Wales.

In England and Wales this jurisdiction was exercised by the Lord High Admiral and extended over all waters where the tide ebbed and flowed, and where great ships were accustomed to go, but his jurisdiction was liable to be restricted by the other courts. In course of time the post of Lord High Admiral was abolished and the powers exercised by him were transferred to the High Court of Admiralty.

Frequent conflicts arose between that Court and the Courts of Common Law as to the exercise of the jurisdiction of the High Court of Admiralty, and the Admiralty Court Acts of 1840 and 1861 were passed to define its jurisdiction and improve its procedure.

In 1873, by the Supreme Court of Judicature Act passed in that year, the High Court of Admiralty was, with all the other Superior Courts of original jurisdiction, abolished, and its jurisdiction was transferred to the High Court of Justice and its business

assigned to the Probate, Divorce and Admiralty Division, the other divisions being the King's Bench Division and the Chancery Division. The judges of the Admiralty Division consist of the President and two judges who exercise a dual jurisdiction—Admiralty and Common Law. The Admiralty Division has exclusive jurisdiction as regards claims, the proceedings with respect to which are *in rem* by reason of there being a maritime lien or otherwise, such as claims relating to collisions, salvage, mortgages, bottomry bonds, wages of the crew and necessaries supplied to a ship. The Division also possesses a certain amount of common law jurisdiction, the proceedings in respect to which are *in personam*, and by the Administration of Justice Act, 1920, Section 5, it was enacted that the Admiralty jurisdiction of the High Court should extend to (*a*) any claim arising out of an agreement relating to the use or hire of a ship; (*b*) any claim relating to the carriage of goods in any ship; (*c*) any claim in tort in respect of goods carried in any ship, provided that at the time of the institution of the proceedings the owner or part owner of the ship was not domiciled in England or Wales, and the jurisdiction might be exercised either in proceedings *in rem* or *in personam*.

This section of the Act, together with sections of the Admiralty Court Acts of 1840 and 1861 and of the Supreme Court of Judicature Act of 1873, were repealed, but in large measure re-enacted, in the Supreme Court of Judicature (Consolidation) Act, 1925, which constitutes a complete Act relating to the administration of justice in England and Wales. Section 22 deals more particularly with the Admiralty jurisdiction of the High Court, and certain County Courts possess Admiralty jurisdiction in respect of claims which do not exceed £300.

Proceedings *in personam* and *in rem*.

In proceedings *in personam* the writ is issued against the defendant personally, and there is no security for the amount of the claim, but after the judgment of the court has been delivered, and failing payment of the damages, any property of the defendant within the jurisdiction of the court may be arrested in satisfaction of the debt. In proceedings *in rem*, failing the defendant or his solicitor undertaking to give bail, the property in respect of which the claim arises is arrested by the Marshall of the Admiralty Court, and is only released on security being provided for the amount of the claim.

In *Select Pleas in the Court of Admiralty*, published by the Selden Society, it is stated: "The ordinary mode of commencing "the suit was by arrest either of the person of the defendant or of

" his goods. Arrest of goods was quite as frequent as arrest of " the ship ; and it seems to have been immaterial what the goods " were, so long as they were the goods of the defendant and were " within the Admiral's jurisdiction at the time of the arrest. . . . " Scarcely a trace appears of the modern doctrine of arrest being " founded upon a maritime lien ; the fact that goods and ship " that had no connection with the cause of action, except as belong- " ing to the defendant, were subject to arrest, points to the con- " clusion that arrest was mere procedure, and that its only object " was to obtain security that judgment should be satisfied."

In England it became the practice to restrict the arrestment to the actual property in respect of which the claim arose, but in Scotland, when the owner is not within the jurisdiction, any moveable property belonging to him which is in the country may be arrested to found jurisdiction.

Generally speaking, in England and Wales, an action *in rem* may be brought to enforce a maritime lien on a ship for salvage, damage by collision, bottomry, seamen's wages and wages and disbursements of a master, also to enforce a claim against a ship-owner for necessaries, towage services performed under a towage contract, or for damage to cargo due to a cause not excepted by the contract of carriage, or to enforce rights arising out of the ownership or the mortgage of ships.

The advantages of an action *in rem* were summarized by Mr. C. R. Dunlop, K.C., in a lecture he delivered in London some years ago, as follows :

" 1. If the ship is within three miles of the shores of England " or Wales she can be arrested and the claim adjudicated upon, " although her owner may be a foreigner outside of the jurisdiction " and the claim of a nature in which leave could not be granted " to serve him out of the jurisdiction with notice of an ordinary " writ *in personam.*

" 2. The arrest of a ship puts a very effective pressure on her " owner or other person pecuniarily interested in her to enter an " appearance to the action in every case in which the claim is less " in amount than the value of the ship, and provide bail for the " amount of the claim to obtain the release of the ship from arrest.

" 3. The plaintiff who commences his action by arrest of the " ship at once obtains security for his claim. If he succeeds in " proving his claim and getting judgment, he can enforce his " judgment by selling the ship, if she has remained under arrest, " or against the bail if she has been released."

Development of maritime liens.

The substitution of the arrest of property for the arrest of the person led to the development of maritime liens.

Mr. C. R. Dunlop, K.C., in the course of the same lecture mentioned above, remarked as follows:

"The Admiralty Court did not, until about the middle or end "of the eighteenth century, treat the action *in rem* as a specific "form of action distinct from an action *in personam*. Originally "the procedure of the Court was *in personam*. The defendant "was arrested to make sure of his appearing and answering the "claim made against him. If he gave bail for the amount of the "claim, he was released; if he did not, he was kept in prison until "the trial. If he could not be arrested, either because he was at "sea or abroad, or because, if he was in England, he could not be "found, the Admiralty Court would issue a warrant for the arrest "of any ship or goods belonging to him or for the attachment of "any debts due to him. The object of this procedure was to put "pressure upon him to enter an appearance and obtain the release "of his property from arrest by providing bail for the amount of "the claim. If he did not appear, judgment could be enforced "against the property arrested. Procedure by arrest of the person "was naturally unpopular, and that by arrest of the defendant's "property was obviously of more benefit to the claimant. There-"fore actions commenced by arrest of the person became obsolete, "the last recorded case being in 1780.

"As procedure by arrest of property became more common, "the theory of maritime liens was developed. The theory that "the property was arrested to enforce a lien which had attached "to it was a plausible explanation of the somewhat drastic and "peculiar procedure of the Court. There was a good deal of justi-"fication for the theory in cases of bottomry and seamen's wages, "little in cases of salvage, and less in cases of tort. But whether "historically sound or not, the existence of a maritime lien on a "ship for bottomry, seamen's wages, salvage, and damage by "collision became well established as part of the maritime law of "England. The logical result of the doctrine was that the right of "arrest became limited to the particular ship to which the lien "had attached. The remedy of arresting any other property "belonging to the shipowner was lost, but the privileged claimant, "in whose favour the lien existed, had this compensation, that the "maritime lien continued to attach to the ship until payment or "satisfaction of the claim, and could be enforced by arrest of the "ship even after she had been sold to innocent purchasers ignorant

" of the existence of the claim. It is in this respect that a maritime " lien differs from and is more advantageous than the right of arrest " or statutory lien which the Admiralty Court Acts gave in cases " of necessaries, towage, and damage to cargo by breach of contract " of carriage."

A maritime lien is a privileged claim upon maritime property in respect of service done to it or injury caused by it to be carried into effect by legal process ; it is a right by one person over a thing belonging to another person. There is an order of precedence in the ranking of liens on the same property, and speaking generally it may be said that a damage lien takes precedence of charges upon the ship arising out of contract.

No maritime lien attaches to a ship belonging to a sovereign power.

Admiralty jurisdiction in Scotland.

By an Act of the Scottish Parliament passed in 1681, the jurisdiction of the High Court of Admiralty, which exercised the judicial functions of the Admiral of Scotland, was defined and regulated, but the Court was abolished in 1830 and its juridiction was transferred to the Court of Session, which is the Supreme Court of Scotland, and the Sheriff Courts of the Counties ; there is no special Admiralty Division of the Court of Session as there is of the High Court in England.

The Scottish Courts have both an Admiralty and a common law jurisdiction, and whilst the maritime law which is applied in Scotland is the same as in England there are differences in procedure.

Arrestment to found jurisdiction and upon the dependence of the action.

In Scotland the right is still retained to found jurisdiction against a foreigner by arresting property other than that in respect of which the claim arises.

This right of arrestment does not apply only to ships ; by the law of arrestment *ad fundandum jurisdictionem* a Scots Court can exercise jurisdiction over a foreigner by arrestment of any moveable property belonging to him in Scotland, or even a debt due to him. Many other countries, including England, decline to recognize arrestment of a foreigner's moveable property as subjecting him to the jurisdiction of their Courts in connection with actions unconnected with the property arrested. This ground of jurisdiction is independent of any lien, and is quite distinct from that where the property in respect of which the claim arises is itself arrested to force the owner to enter an appearance to the action and give bail, as where a ship which is itself involved is arrested for collision damages or salvage.

In a general sense, and more particularly as regards claims arising in connection with ships, there are three classes of arrestment in Scotland:

1. *Arrestment to Found Jurisdiction.*—A foreigner not otherwise subject to the jurisdiction may be made subject by arrestment in the hands of a third party in Scotland of a debt due to him or of moveable property belonging to him. This merely founds jurisdiction; it does not attach the debt or property in security for the claim. "As soon as the foreign owner has been duly made a "party to the process, the arrestment is spent and the arrestee is "no longer as in a position with the arrester under any obligation "to retain in his hands the moveables which it affects. The "summons must be served within a reasonable time after the "arrestment, but a delay of three months is not unreasonable. "If it is wished to attach the property in security of any decree "which may be obtained, it must also be arrested on the depen-"dence of the action." (Balfour's *Handbook of Court of Session Practice.*)

2. *Arrestment in Security.*—Arrestment may be used on the dependence of an action in security for the sum to be awarded therein, as where property which was arrested to found jurisdiction is again arrested as explained above, or a ship is arrested in connection with a claim for collision damages or salvage, and bail has to be provided to remove the arrestment. Such an arrestment may be effected before, but it is usually not done until after the summons has been executed.

3. *Arrestment in Execution.*—A decree of the Court may be enforced against the unsuccessful party to the action by the arrest, and, in case of need, the sale or disposal of his property situated in Scotland.

Arrestment to found jurisdiction is of ancient origin, but can only be used in causes for the payment of a sum of money and against a party who is not otherwise subject to Scots jurisdiction. "For the purpose of founding jurisdiction, any property, however "small in value, is sufficient, provided it is not elusory. What is "elusory has not been determined: £1 8*s.* 6*d.* is not; liability to "account will be in general sufficient, unless it can be shown there "is no balance. . . . In order to found jurisdiction by arrest-"ment, money due or goods belonging to the debtor must be "arrested; so arrestment of a ship was held not to found juris-"diction against a mortgagee; and arrestment of a ship, the "property in which had been transferred prior to the arrestment,

" was held invalid. . . . The arrestment of a ship presents " some peculiarities. It can be arrested either *ad fundandum* " *jurisdictionem* or on the dependence of an action like other " moveable subjects. It may be arrested to found jurisdiction " against a part owner, but it cannot be arrested after it has left " port, even although not yet on the high seas. The object and " effect of this diligence is to fix property of the defender within " the jurisdiction, and it may be loosed on caution *judicio sisti.* " When jurisdiction has once been constituted by citation, the use " of the arrestment is at an end." (Mackay's *Manual of Practice in the Court of Session.*)

A claim may be established against a foreigner by reconvention. In Mackay's *Manual* it is stated : " Our law has received from the " Roman law, adapted by the civilians, the rule of reconvention, " by which a foreigner who brings an action in a Scottish Court is " bound to answer in it to any suit which has a direct connection " with that brought by him. This is a rule of pleading rather than " a point of jurisdiction ; but its result is to give jurisdiction where " otherwise it would not exist."

The Scots law of arrestment to found jurisdiction has its limitations. Although jurisdiction may be correctly founded, it does not follow that the Courts will try the action. They may decline to do so and dismiss the action on the ground of *forum non conveniens* and hold that " for the interests of all parties, and for the ends " of justice, the cause may more suitably be tried elsewhere," but save in exceptional cases the Courts are reluctant to sustain such a plea.

This right of arrestment to found jurisdiction has been recently exercised in the following cases :

Steven Line v. *Nederlandsch Amerikaansche Stoom. Maats* (" *Ezardian* "), 1923.

Société du Gaz de Paris v. *Société Anon. de Nav. les Armateurs Français* (" *Depute Emile Driant* "), 1925.

Sheaf Steamship Co. v. *Compania Trasmediterranea* (" *Sheaf Lance* "), 1930.

It was only, however, in the first case that the action was ultimately tried in Scotland, and in the two other cases, as oral evidence was required, it was held that the actions could more conveniently be tried abroad where the defendants and witnesses resided.

As regards the Scots law of arrestment to found jurisdiction and on the dependence of the action there is no counterpart in English

law, and in 1927 a Committee was appointed by the Lord Chancellor to consider the question whether it was expedient to adopt in England a system similar to that of arrestment upon the dependence in Scottish law, but the Committee came to the conclusion that it was not expedient to do so, especially in view of the fact that the question of maritime liens had recently been the subject of international agreement as a basis of national legislation in different maritime countries.

In 1926 a Royal Commission was appointed under the presidency of Lord Clyde, Lord President of the Court of Session, to inquire into the constitution and jurisdiction of that Court and the Sheriff Courts. In an exhaustive report issued in 1927, the Members of the Commission made a number of recommendations, including some respecting the present procedure of arrestment of property on the dependence of the action, limitation of liability under the Merchant Shipping Acts and other maritime matters, but so far legislative effect has not been given to any of these recommendations.

Assessment of damages in England and Scotland.

In England the Admiralty Division deals with the question of liability in the first instance, and as a general rule the assessment of the damages is referred to the Registrar of the Admiralty Court assisted by Merchants. This practice appears to have arisen in the eighteenth century. Appeals from the Registrar's award may be made to the Admiralty Court.

In Scotland there is no such official, and unless it is otherwise arranged the proof of damages is taken at the same time as the Court deals with the question of liability. It is frequently arranged, however, for the proof of damages to be postponed until the question of liability has been determined. In many cases the parties adjust the damages themselves, whilst in other cases it is agreed to refer them to the arbitration of an expert, such as an average adjuster. Sometimes the Court remits the assessment of the damages to such an expert, and that course is usually adopted in the case of statutory limitation of liability where a fund is lodged in Court and the various claimants file claims to rank on that fund. In that event the expert to whom the assessment is remitted performs the duties of the Registrar of the Admiralty Court in England, and the method of procedure is shown in the cases of the *Carron Line* v. *Cayzer, Irvine & Co.* (1885) and the *Laird Line* v. *The Clan Line—The "Rowan"* (1926).

Procedure in collision actions.

It is not proposed to deal in detail with the legal procedure in collision actions, but only to touch on certain matters which concern the insurers and the ultimate adjustment of the claims on the

policies on the damaged ship and under the Collision Clause in the policies of insurance on the ship in fault.

On receipt of advices of the collision the assured should communicate with his insurance brokers through whom the ship is insured and with the Protection and Indemnity Association in which the ship is entered, so that the insurers may be consulted as regards the appointment, in case of need, of solicitors to represent the assured and surveyors to survey the damage sustained by both ships and report thereon and such matters as the angle of the blow, which may have a bearing on the question of fault for the collision, and the length of detention under repair.

In some instances it is arranged that the Protection and Indemnity Association shall on behalf of the assured and his underwriters deal with the matter and effect a settlement with or without legal advice.

If solicitors are appointed they investigate the circumstances by taking the statements of the crew and other witnesses and report as regards the cause of the collision and the probable result of a trial. It may be decided on the solicitors' advice to institute proceedings and pursue the action up to the discovery of documents to see the nature of the defence and for the solicitors to again report on the merits of the case before further proceedings are taken, and, except as regards the preliminary steps, legal costs should not be incurred or proceedings instituted and continued without the concurrence of the underwriters on the ship and the Protection and Indemnity Association, if it should be concerned.

In the meantime, as a preliminary step, the owners or their solicitors exchange undertakings to provide bail in due course if required, and in the case of a foreign vessel it is usual and expedient that bail should be actually provided before the vessel proceeds to sea, as if she is lost the recovery of damages would be prejudiced.

An amicable settlement of the question of liability is frequently made as the result of negotiations between the owners themselves or their solicitors, failing which resort is had to arbitration or a court of law.

After the question of liability has been determined, the assessment of the damages remains to be dealt with by negotiation, arbitration or resort to the court. The formulation of the details of the claim is frequently left to the average adjuster who will ultimately deal with the adjustment of the claim on the policies on the ship, and delay and expense may be saved by the adoption of that course.

CHAPTER II

Damage by Collision and Liabilities Arising under Statutory Powers

Liability arises whether there has been contact or not.—Meaning of word "collision."—Damages for which liability arises are not confined to ship injured but extend to cargo, freight and property on board, floating and stationary objects, also loss of life and personal injury.—Causes of collisions.—Negligence.—Contributory negligence.—Persons liable.—Persons entitled to recover.—Regulations for Preventing Collisions at Sea.—Liabilities under statutory powers for damage to harbours, wharves and piers and cost of removing obstructions.

Contact not necessary to give rise to liability.

The liability which the owner of a ship is most frequently called upon to bear is that arising out of the damage which the ship may do to another ship.

In order to establish such liability it is not necessary that the ship should have been in actual contact with the other ship. A claim may arise where one ship has borne down upon and compelled another ship to slip her anchor or run ashore in order to avoid a collision, or has proceeded at excessive speed in narrow waters which has caused a swell whereby a ship has been made to range and thereby damaged herself or another ship or a wharf, or where by negligent navigation a ship has caused another ship to collide with a third ship.

Meaning of word "collision."

Strictly speaking, the word "collision" implies actual contact by one object striking or dashing violently against another object or each one striking the other, and whilst in marine insurance law the word is confined to actual contact of one navigable object with another, in dealing with this section of the subject relating to the liability of those responsible for the occurrence,in order to avoid repetition, it will be well to apply a wider meaning to the word as denoting an accident whereby by actual contact or otherwise a ship causes damage to another ship or some other floating or stationary object, such as a buoy, pier, jetty, quay, wharf, dock, etc.

Extent of damages.

The damages for which the wrong-doing ship is liable are not confined to the injury sustained by the other ship and her cargo, freight and property on board, but extend to the damage done, either directly or indirectly, to docks, piers, wharves and other fixed or moveable objects, and to loss of life or personal injury arising out of the collision or negligent navigation of the ship.

Various causes of collisions and similar accidents.

The mere fact that a ship collides with or causes damage to another ship, with direct or indirect consequences, does not necessarily create a liability. Such a collision or accident may arise from various causes, and it entirely depends on the nature of the cause as to whether any liability arises.

The various causes may be summarized briefly as follows:

Act of God.

(*a*) *Act of God.*

In the event of the collision being due to what is termed the act of God or forces of Nature, no liability is created in respect of the damages arising therefrom, and the misfortune must be borne by the party on whom it happens to light, the other party not being responsible to him in any degree.

Inevitable accident.

(*b*) *Inevitable Accident.*

The expression is used as applying to collisions which could not have been prevented by the exercise of ordinary care, caution and maritime skill of those in charge of the ship, as where through some mechanical defect or mishap, for which no one is to blame, a ship's steering gear suddenly jams or breaks down and before anything can be done the ship collides with another ship. It is stated in Marsden's *Collisions at Sea* (p. 20): "A collision may "be an inevitable accident so far as the ship sued is concerned, "although it was caused by fault elsewhere; as in the case of a ship "which is thrown against another by the swell of a passing steam-"ship, or by a third ship coming foul of her, or causing her suddenly "to alter her course in order to avoid a fourth ship." Where inevitable accident is established no liability attaches to the ship which is the direct and innocent instrument of the damage but that does not relieve the ship that is in fault of her liability.

Inscrutable fault.

(*c*) *Inscrutable Fault.*

Where it is clear that a collision between two ships was caused by fault somewhere, but it cannot be proved which ship was actually in fault, no liability attaches to either ship and each bears its own damages.

Negligence.

(*d*) *Negligence.*

Negligence has been aptly described as "doing something which "ought either to be done in a different way or not at all, or omitting

"to do something which ought to be done" (*per* Alderson, B., *Blythe* v. *Birmingham*, 1856.) Those who are engaged in the navigation of a ship are expected to possess the necessary skill and knowledge and to exercise reasonable care in the navigation and management of the ship in ordinary circumstances, and in any exceptional position the ship may be placed in by force of circumstances or their own actions or the actions of others. Failure to do so which causes a collision constitutes negligence and creates a liability for the damages arising therefrom, in addition to those in fault bearing their own burden.

Contributory negligence.

(*e*) *Contributory Negligence.*

There is a distinction between Admiralty law and common law as regards the effect of contributory negligence. Where one ship is primarily negligent for a collision and the other ship is guilty of contributory negligence that is not a ground for dismissing the action and letting the loss lie where it falls, as at common law, but for apportioning the loss between the two ships. Formerly it was apportioned equally, but since the Maritime Conventions Act, 1911, it is divided in proportion to the degree in which each ship was in fault.

Persons liable.

As already mentioned, although the ship herself is commonly referred to as being liable, that is merely a figurative way of expressing the liability of the actual wrong-doer or his employer.

The persons liable for the damage done by the ship may be classified as follows:

Actual wrong-doer.

(*a*) *The Actual Wrong-doer.*

The owner navigating his own ship, the member of the crew or other person who was navigating the ship, or the pilot, are the persons primarily liable, but in the case of the crew or the pilot they may not have sufficient means to make adequate redress for their fault, and consequently may not be worth suing, and in such cases remedy is sought against the employer.

Employer of wrong-doer.

(*b*) *The owner, other than one navigating his own ship, or other party who has temporary control of the ship, as the employer of the actual wrong-doer.*

The owner of a ship which has done the damage is not liable as the owner but as the employer of the person causing the collision, provided that such person was acting within the scope of his employment. Where a ship is chartered and the charterer provides the crew, the liability attaches to him and not to the owner. From the terms of the Maritime Conventions Act, 1911, the position would appear to be the same as regards other persons who for the time being are responsible for the navigation and management of the

ship, such as transporting contractors, shipbuilders and ship repairers who have temporary control of the ship. The Act, Section 9 (4), provides that " where by virtue of any charter or demise or for any " other reason, the owners are not responsible for the navigation of " the vessel, this Act shall be read as though for references to the " owners there were substituted references to the charterers, or " other persons for the time being so responsible." This provision has an important bearing on the construction of the Collision Clause, which only applies to a collision for which the actual owners of the ship, if they are the assured, are liable, and the question will be dealt with later when that clause is under consideration.

As regards the liability of the owner of a ship for the fault of the pilot, a distinction was formerly made between an ordinary pilot for whose fault the owner was liable and a compulsory pilot for whose fault he was exempted from liability (Merchant Shipping Act, 1894, Section 633), but this distinction was removed by the Pilotage Act, 1913, whereby the owner of a ship which is in charge of a compulsory pilot is answerable for damages in the same manner as if the pilotage were not compulsory. In both instances the pilot is deemed to be the servant of the shipowner or person who employs him.

There are certain exceptions to the liability of the owner of a ship navigated by his servants, as where the ship is under the orders of a harbour master and there has been no contributory negligence on the part of the crew.

As regards warships and even commercial ships owned by a Sovereign State, or privately owned ships under requisition by a Government, they are not subject to the ordinary rules of law, but an effort is being made to make commercial ships owned or operated by a Sovereign State subject to the same processes of law as an ordinary ship owned by private persons or a public company.

As regards the liability of the owner for damage done by the ship, an exception may also have to be made where the ship has been wrecked and has been rightly abandoned by the owner to the proper authorities. In that case the owner may have divested himself of any responsibility in respect of the wreck, which may thereby devolve on the port or other authority which is responsible for the area where the wreck lies. An instance of this occurred in the case of the " Clan Shaw " S.S. which was wrecked at the mouth of the River Tay and rightly abandoned by the owners to the proper authorities, and the Dundee Harbour Trustees were held liable for damage sustained by other vessels fouling the wreck by reason of

a neglect of duty on their part in not providing a pilot. (*Anchor Line, Ltd.*, v. *Dundee Harbour Trustees; Ellerman Lines, Ltd.*, v. *Dundee Harbour Trustees*, 1922. See also "*Orient City*," 1929.)

Liability of ship.

(*c*) *Liability of Ship.*

The liability of the actual wrong-doer for a collision and of the persons responsible for his actions rests on common law by proceedings *in personam*, but in some instances there is also a right of action in Admiralty by proceedings *in rem* where there is a maritime lien or charge on the ship for the damage. This process originated as an effectual means of compelling the wrong-doer to appear and defend the action or to make recompense, as a substitution of the ancient practice of arresting the wrong-doer personally until he had found security. The history of this process is very interesting, but the question whether any liability attaches to the ship apart from that of the owner is open to doubt. After citing a number of decisions bearing on the question, Marsden in his *Treatise on the Law of Collisions at Sea* (p. 98) concludes as follows: "Having re-" gard to the above decisions, it seems that, notwithstanding *dicta* " to the contrary, a person injured by a collision can in some cases " recover against the owner of the ship that has done the damage " by proceedings in Admiralty *in rem* where he could not recover " at common law. But the exact liability of the ship, apart from the " question of ownership, cannot yet be considered as settled."

There is one aspect of this question which will be considered later as bearing on the amount recoverable from the owners of a wrong-doing ship which is sunk as a result of the collision, and that is that the maritime lien is contingent on the ship surviving the collision, and consequently the process is not applicable to the case where the ship has been lost through the collision.

Tug and tow.

(*d*) *Tug and Tow.*

It is commonly said that a tug and tow are one, but that is a figurative and somewhat misleading way of speaking, and it is now "conclusively established that the question of the identity " of the tow with the tug that tows her is one of fact, not law, to " be determined upon the particular facts and circumstances of " each case " (*per* Lord Atkinson, *Owners of the S.S. "Devonshire"* v. *Owners of barge "Leslie,"* 1912). Apart from any special terms in the towage contract, the question depends on which is in control of the navigation, tug or tow, and all that need be said here is that in certain circumstances the tug may be said to be the servant or in the service of the tow, rendering the owners of the tow liable for the damage done by the tug.

Criminal liability for collision.

When a collision occurs in consequence of which there is loss of life or personal injury, the person who is responsible for it by reason of reckless or negligent navigation may be prosecuted criminally, in addition to incurring civil liability for damages, and the fact that the negligent act of his servant is criminal does not relieve the owner of the ship, as the employer, of his liability for damages. Where the collision occurs abroad or criminal proceedings are taken in this country against a foreigner questions of difficulty arise as regards the jurisdiction of the Courts and the criminal law to be applied. An effort is now being made to obtain international agreement on the queston.

Persons entitled to recover.

Having dealt briefly with the question of the persons liable for damages arising out of a collision, it remains to mention the persons entitled to recover such damages. The law on this point is very aptly stated in McMillan's *Scottish Maritime Practice* (p. 177): "All persons injured by the fault of one or both ships, who have "not themselves or through their agents or servants been guilty "of negligence, and who are not in common employment with the "wrong-doer, are entitled to recover damages. Thus, the owner of "the damaged ship, who need not be the registered owner, but may "be a beneficial owner, may recover. Since the right of recovery "is not an incident of property in the vessel, underwriters may "recover if subrogated to the rights of the owner whom they have "indemnified. They can, however, acquire no higher right than "that of the owner, and in cases where the owner cannot enforce "a claim, neither can the underwriters, as in the event of the "collision of two ships belonging to the same owner. The action "requires to be in the name of the owner."

Claimants in respect of loss of life and personal injury.

Claims for loss of life and personal injury are in a special position.

In England, prior to 1846, no civil action lay for damages for loss of life. In that year Lord Campbell's Act was passed (9 & 10 Vict. c. 93), whereby the relatives of the person killed could institute an action *in personam* against the person responsible for damages proportionate to the injury from such death suffered by the claimant, and the damages were to be assessed by a jury. That Act did not confer any power on the Admiralty Court to try such an action and it had to be brought in the ordinary courts. (*The "Vera Cruz,"* 1884.) Admiralty procedure is now competent in actions for loss of life and personal injury as the Maritime Conventions Act, 1911, Section 5, provides that "any enactment which confers on any court "Admiralty jurisdiction in respect of damage shall have effect as "though references to such damage included references to damages

"for loss of life or personal injury, and, accordingly, proceedings "in respect of such damages may be brought *in rem* or *in per-* "*sonam.*" The position is now the same both in England and Scotland, but whilst Admiralty procedure is competent it is not the maritime law but the common law which is applied, and accordingly the special rules of maritime law respecting the division of loss where both vessels are to blame and other matters do not apply. The section of the Act relating to loss of life and personal injury applies only to claims for damage by collision and not to claims which arise independently of fault on the part of the owner of the ship, such as compensation paid under the Workmen's Compensation Acts.

Regulations for preventing collisions at sea.

It does not come within the scope of the subject at present under consideration to deal with the question of what constitutes negligence in the case of collision, but there are certain Regulations for the Prevention of Collisions at Sea, the infringement of which is regarded as evidence of negligence, if the breach caused or contributed to the collision. By the Merchant Shipping Act, 1894, section 419, it is provided that all owners and masters of ships shall obey the collision regulations, and shall not carry or exhibit any other lights, or use any other fog signals, than such as are required by those regulations, and that the ship by which the regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made the departure from the regulation necessary. The regulations at present in force are those of 1910, but sub-section 4 of section 419, respecting the presumption of fault arising from the infringement of any of the regulations, was repealed by the Maritime Conventions Act, 1911, Section 4 (1), and this arbitrary rule was abolished. It is now necessary to prove that non-observance of a regulation caused or contributed to a collision or the damage resulting therefrom.

Division of loss where both vessels are to blame.

The provisions of the Maritime Conventions Act, 1911, dealing with the division of loss where both ships are to blame for a collision have such an important bearing on the rights and liabilities of the owners of the two vessels and consequently on the amount which the underwriters who have insured a ship may recover by subrogation in respect of the loss of or damage to the ship insured, and also on the amount payable by them within the terms of the Collision Clause, that a consideration of certain of the provisions of this Act is desirable and the matter will be dealt with later, and the Act also affects the position respecting loss of and damage to cargo and loss of life and personal injury.

Liabilities arising under statutory powers

Liabilities may attach to the owner of a ship, merely as owner, where his ship damages a harbour, dock or pier, or the wreck of the ship causes an obstruction, notwithstanding that there was no negligence on his part or that of his servants. By the Harbours, Docks and Piers Clauses Act, 1847, section 74, the owner of a ship is liable for damage done by the ship, or by any person employed about her, whether the actual wrong-doer is his servant or not and notwithstanding that there was no negligence, except that he is not liable for damage due to the act of God or where the ship was not under the control of the owner or his agent. (*River Wear Commissioners* v. *Adamson*, 1877; *The "Mostyn,"* 1928.) He may also be liable for the cost of removing the wreck of his vessel, irrespective of how it came to be wrecked. In addition to the Act referred to there are other Acts bearing on the subject, including the Dockyard Ports Regulation Act, 1865, and the Removal of Wreck Act, 1877, the latter of which was repealed but re-enacted in the Merchant Shipping Act, 1894, Sections 530/4, and there are special Acts relating to particular areas, such as the Thames, the Mersey and the Clyde.

CHAPTER III

Rule as to Division of Loss where both Vessels are to Blame for Collision

Differences between Admiralty law and common law.—History of Admiralty rule of division of loss.—Admiralty law in England and Scotland the same.—Maritime Conventions Act, 1911.—Division of loss in proportion to degree of fault.—Settlement of damages on basis of single liability.—Scope of Act and position in foreign countries.

Differences between Admiralty law and common law.

There are important differences between the recovery of damages arising from collisions at sea and damages arising otherwise, where one person suffers a loss by reason of the fault of another person.

Whilst there is no difference between Admiralty law and common law as to what constitutes negligence or contributory negligence, the damages arising from the fault of both parties are dealt with differently in Admiralty law than at common law—that is, the law administered by courts other than the Admiralty Courts or courts having Admiralty jurisdiction. In Admiralty law, where both ships are to blame for a collision, the damages are divided between the owners of the two ships, whilst at common law where both parties are in fault for what has occurred, neither party can recover any damages from the other.

Another difference is in the case where two parties are both in fault for the damage sustained by a third party. In Admiralty law, where two ships are both to blame for damage sustained by a third ship, the owner of the third ship can recover his full damages from the owner of either of the other two ships, and the owner of the wrong-doing ship who has paid the damages can recover the proper proportion from the owner of the other wrong-doing ship. At common law there is no such right as there is no contribution between joint tortfeasors.

Another distinction is that at common law the general principle is that the person in fault is liable up to the full extent of his means,

but in the case of damage caused by a ship there is in certain circumstances a statutory limitation of the owner's liability.

History of rule as to division of loss where both vessels are to blame.

The history of the rule as to the division of loss in case of collisions at sea where both vessels are to blame is a development of a very ancient practice.

There was a code of maritime law, called the Laws of Oleron, which was published in Rouen in 1266, and manuscript copies of it are still preserved in London and elsewhere in this country. In the early part of the fourteenth century it was regarded as the Admiralty law of this country and it was the foundation of later maritime codes adopted by large trading centres in Western and Northern Europe in the Middle Ages.

In *The Romance of the Law Merchant*, by W. A. Bewes, there is an interesting account of these codes and the commercial activities of the Middle Ages. Amongst other things it may be remarked that the religious houses in England and Scotland carried on an extensive overseas trade. It is recorded by Finot that when an expedition against the Turks was projected in 1457, after the fall of Constantinople, there were in the port of l'Ecluse "one barge of "Scotland belonging to the Bishop of St. Andrews, a very fine vessel "of 500 tons; another of 350 tons, a carvel of 140 tons belonging "to the Bishop of Aberdeen, a barge of Scotland of 150 tons, a "small carvel of Scotland of 28 tons, and a small whale ship of "Scotland of 20 tons."

A feature of the Laws of Oleron and other mediæval maritime codes was a provision for distributing the loss in case of collision. "The division, however, is not by all the codes made in equal "shares; and in some the loss appears to have been distributed in "the way of general average contribution. The principle or idea "underlying the rule seems to have been that collision was a peril "of the sea—a common misfortune to be borne by all parties, "either equally or rateably according to their interests at risk. "The rule of dividing the loss being found in the Laws of Oleron "and the early codes, the judges of the English Admiralty were at "a loss to find reasons for applying it when negligence was proved "against one or both ships. The idea of a collision having been "caused by negligence does not seem to have been present to the "minds of the framers of the Laws of Oleron; and it is not very "distinct in the later codes. When, in the early part of the "seventeenth century, collision cases became frequent in the "Admiralty Court, the question of negligence comes into promi-"nence; and it is just at this time that sentences dividing the loss

"first appear in the records." (Marsden's *Collisions at Sea*, p. 136.)

In the course of time, in the development of our law, the rule of the division of loss was confined to Admiralty law and was restricted to the case where both ships were to blame for a collision, the damages being divided equally between the owners of the two ships. This rule was only applied in the Admiralty Court, and in other courts, as Marsden states, "the rule that a person cannot "recover damages for loss caused wholly or in part by his own "negligence was applied in collision as in all other cases."

Equal division of loss.

In the case of *Hay* v. *Le Neve* (1824), the Courts in Scotland divided the damages in proportion to the degree of fault on the part of each ship, but the House of Lords reversed this decision and laid down the rule of equal division of loss where both ships are to blame, as being the rule common to both England and Scotland.

In 1873 the Judicature Act was passed which enacted that the rules in force in the English Court of Admiralty should be applied in all cases arising out of a collision between two ships, if both ships were found to blame, and the law as to the incidence of loss became the same in all the Courts in England.

After the case of *Hay* v. *Le Neve* the same rule pertained in Scotland, where the Court of Admiralty was abolished in 1830, and Admiralty jurisdiction was transferred to the ordinary courts, that is the Sheriff Courts of the counties and to the Court of Session, which is the Supreme Court of Scotland, appeals from which are to the House of Lords.

There is no difference in Admiralty law between England and Scotland. In delivering his decision in the case of *Currie* v. *McKnight* in the House of Lords in 1897, Lord Halsbury said: "The Admiralty laws were derived both by Scotland and England "from the same source; and as it is said by no mean authority "that the Admiralty law was derived from the Laws of Oleron, "supplemented by the civil law, it would be strange as well as in "the highest degree inconvenient if a different maritime law "prevailed in two different parts of the same island."

The rule applied also to claims by the owners of cargo on board one ship against the owners of the other ship. In the case of *The "Milan"* (1860) and subsequently in the case of *The "Drumlanrig"* (1911) the rule was settled that where both vessels are to blame for a collision, the owners of cargo, equally with the owners of the ships, recover a moiety of their damage. The question of the right of the owners of the cargo to recover the other moiety of their damage

from the owners of the carrying ship depends on the terms of the bill of lading or contract of carriage.

The rule of the division of loss did not apply to claims for loss of life and personal injury on the part of passengers or by those members of the crew who were not themselves guilty of negligence.

Single liability.

The application of the rule as to the equal division of loss is that there are not two liabilities, one on the part of the owner of each ship to the owner of the other ship for one half of the loss of the other, but only one liability on the part of the owner of the ship that has done the greater damage for the difference between half of the loss of the one ship and half of the loss of the other. This rule was definitely settled by the House of Lords' decision in the case of *The "Voorwaarts"* v. *The "Khedive"* in 1882, confirming earlier decisions to the same effect in inferior courts.

The fact that there is only one liability for the balance due from the owner of the ship that had sustained the smaller damage had an important effect upon the Collision Clause, for it was held in the case of *The London Steamship Owners' Mutual Insurance Association* v. *The Grampian Steamship Co.* (1890) that the owner of the ship to whom the balance was payable could not recover anything under that clause in the policies on the ship because as a matter of fact he had not paid anything to the owner of the other ship. That decision led to an important amendment of the Collision Clause which will be dealt with later.

Maritime Conventions Act, 1911.

That was the state of the law in England and Scotland prior to the passing of the Maritime Conventions Act, 1911. Owing to the differences existing between our law and that of other countries relating to the division of loss arising from collisions at sea, and as the result of discussion and negotiation between different maritime countries, it was agreed by some of them to pass uniform legislation, and that passed in this country was entitled the Maritime Conventions Act, 1911.

This Act has such an important bearing on the Collision Clause that it is advisable to carefully consider those provisions of it which relate to collisions.

Division of loss in proportion to degree of fault.

Section 1, subsection (1), reads as follows: "Where, by the "fault of two or more vessels, damage or loss is caused to one or "more of those vessels, to their cargoes or freight, or to any pro- "perty on board, the liability to make good the damage or loss "shall be in proportion to the degree in which each vessel was in "fault."

Subsection (2) is explanatory and provides: "For the purposes "of this Act, the expression 'freight' includes passage money and "hire, and reference to damage or loss caused by the fault of a "vessel shall be construed as including references to any salvage "or other expenses, consequent upon that fault, recoverable at law "by way of damages."

The division of loss in proportion to the degree of fault provided for by the Act repealed the law previously existing as regards the loss being divided equally between the owners of the two ships, but there are three important provisions to subsection (1).

Exception where different degrees of fault cannot be established.

The first provides for the application of the old Admiralty rule as regards equality of division where it is not possible to establish which vessel was in the greater fault, and is as follows:

"(*a*) if, having regard to all the circumstances of the case, "it is not possible to establish different degrees of fault, the "liability shall be apportioned equally."

Presumption of fault.

The second provision repealed subsection 4 of Section 419 of the Merchant Shipping Act, 1894, which provided that: "Where "in a case of collision it is proved to the court before whom the case "is tried, that any of the collision regulations have been infringed "the ship by which the regulation has been infringed shall be "deemed to be in fault, unless it is shown to the satisfaction of the "court that the circumstances of the case made departure from the "regulation necessary."

It is now necessary to prove that the non-observance of a regulation caused or contributed to a collision or the damage resulting therefrom, and the repealing provision is as follows:

"(*b*) nothing in this section shall operate so as to render "any vessel liable for any loss or damage to which her fault "has not contributed."

Cases in which Maritime Conventions Act applies.

The main provision in the Act is confined to cases where damage or loss is caused to two or more vessels, and consequently the Act does not apply to a case of contact between a ship and a pier or other fixed object.

The words of section 1 are wide enough to cover a case where two ships are not in actual collision, and Article 13 of the Convention, upon which the Act was based, expressly extended the operation of the rule as regards the division of loss to "damages which a "vessel has caused to another vessel, or to goods or persons on "board either vessel, either by the execution or non-execution of "a manœuvre or by the non-observance of the regulations, even "if no collision has actually taken place."

There is nothing in the Act to prevent it applying to a case where two vessels which are in fault, but not in actual collision, and one of them collides with an innocent third ship, in which case both the vessels in fault are liable for a proportion of the damage caused, and if the owner of one of the ships in fault has paid more than his proper proportion of the damage to the third ship he can recover the excess amount from the owner of the other ship in fault. The rule of common law as to there being no contribution between joint tortfeasors does not apply.

The degrees of fault are within the discretion of the court, and are usually in thirds, fourths or fifths, such as one vessel being one-third to blame and the other two-thirds, or one-fourth and three-fourths, two-fifths and three-fifths, and so on.

Division according to degree of fault applies to claims for loss of and damage to cargo.

The third provision embodies the old Admiralty rule that the division according to the degree of fault shall apply to claims for loss of or damage to cargo resulting from collision, and that the Act does not affect the statutory limitation of liability. The subsection is as follows :

> " (*c*) nothing in this section shall affect the liability of any " person under a contract of carriage or any contract, or shall " be construed as imposing any liability upon any person from " which he is exempted by any contract or by any provision " of law, or as affecting the right of any person to limit his " liability in the manner provided by law."

This provision does not make any change in the legal status of the cargo owner under Admiralty law, as distinct from common law, but merely changes the proportion of his loss which he can recover from the owner of the other wrong-doing ship, his right of recovery of the balance of his damage from the owner of the carrying ship still remaining dependent on the terms of the bill of lading or contract of carriage between him and the owner of the carrying ship.

Position of claimants for loss of life and personal injury.

Sections 2 and 3 relate to claims for loss of life and personal injury, and provide that where such loss or injury is suffered the liability of the owners of the vessels shall be joint and several, that is the claim can be enforced against the owner of either vessel, and the owner of that vessel can obtain contribution from the owner of the other in respect of his proportion of the loss, provided that the latter would have been liable for such loss had the claim been made upon him in the first instance.

Section 5 is a material alteration of our law, and provides that claims for loss of life or personal injury can now be brought *in rem* in any court having Admiralty jurisdiction.

Scope of Act.

The Act applies to England and Scotland, and similar Acts have been passed in Canada, Australia, New Zealand and Newfoundland, but not in South Africa. All continental countries and many of the South American States have similar legislation, but in the United States of America the equal division of loss is still applied, and the cargo owner can recover the whole of his loss from the owner of either of the wrong-doing ships, but the owner of the ship who has paid the full damages to the cargo owner is entitled to claim from the owner of the other vessel the one-half of the damage he has paid to the cargo owner. The position is the same as regards claimants for loss of life and personal injury.

Illustrations of division of loss on basis of single liability.

The following are illustrations of the division of loss on the basis of single liability, where both vessels are to blame, under the Maritime Conventions Act, 1911.

Ship damages only involved.

1. Ship Damages only Involved.

Steamers " A " and " B " in collision and both to blame.
" A " to extent of 2/3rds and " B " to extent of 1/3rd.

Damages.

Claim of Steamer " A " :	
Cost of repairs and incidental expenses . . .	£4,800
Demurrage for loss of time under repair . . .	1,200
	£6,000
Claim of Steamer " B " :	
Cost of repairs and incidental expenses . . .	£7,500
Demurrage for loss of time under repair . . .	1,500
	£9,000

Combined damages, £15,000.

Settlement.

Steamer " A " is liable to steamer " *B* " for 2/3rds of latter's damages, namely :		
Cost of repairs, £7,500 . .	2/3rds = £5,000	
Demurrage, 1,500 . .	2/3rds = 1,000	
		£6,000
Steamer " B " is liable to steamer " A " for 1/3rd of latter's damages, namely :		
Cost of repairs, £4,800 . . .	1/3rd = £1,600	
Demurrage, 1,200 . . .	1/3rd = 400	
		2,000
Balance due from Owner of Steamer "A" to Owner of Steamer " B "		£4,000

Result.

Owner of Steamer "A" pays:

His own loss		£6,000
Balance due to Owner of Steamer "B"		4,000
		£10,000

Owner of Steamer "B" pays:

His own loss	£9,000	
Less balance recovered from Steamer "A"	4,000	
		5,000
		£15,000

2. Ship and Cargo Damages involved.

Ship and cargo damages involved.

Steamers "C" and "D" in collision and both to blame.
"C" to extent of 3/4ths and "D" to extent of 1/4th.

Damages.

Claims of Steamer "C" and cargo on board:

Cost of repairs and incidental expenses	£3,000
Demurrage for loss of time under repair	1,000
	£4,000
Damage to cargo	1,000
	£5,000

Claims of Steamer "D" and cargo on board:

Cost of repairs and incidental expenses	£6,000
Demurrage for loss of time under repair	2,000
	£8,000
Damage to cargo	2,000
	£10,000

Combined damages, £15,000.

Settlement.

Owner of Steamer "C" is liable for 3/4ths of claim of Owner of Steamer "D," namely:

Cost of repairs,	£6,000	3/4ths =	£4,500
Demurrage,	2,000	3/4ths =	1,500
	£8,000		£6,000

Owner of Steamer "C" is liable, as shown, for . .	£6,000
Owner of Steamer "D" is liable for 1/4th of claim of Owner of Steamer "C," namely:	
Cost of repairs £3,000 . . . 1/4th = £750	
Demurrage, 1,000 . . . 1/4th = 250	
£4,000	1,000
Balance due from Owner of Steamer "C" to Owner of Steamer "D"	£5,000
Owner of Steamer "C" pays 3/4ths of claim of owner of cargo on board Steamer "D" amounting to £2,000 .	1,500
Owner of Steamer "D" pays 1/4th of claim of owner of cargo on board Steamer "C" amounting to £1,000 .	250
	£6,750

Result.

Owner of Steamer "C" pays:		
His own loss		£4,000
Balance due to Owner of Steamer "D" . . .		5,000
Proportion of claim of owner of cargo on board Steamer "D"		1,500
		£10,500
Owner of Steamer "D" pays:		
His own loss	£8,000	
Less balance recovered from Steamer "C" .	5,000	
	£3,000	
Proportion of claim of owner of cargo on board Steamer "C"	250	
		3,250
Owner of cargo on board Steamer "C" pays:		
His own loss	£1,000	
Less recovered from Steamer "D" . .	250	
Balance unrecoverable from Owner of carrying steamer "C" by reason of terms of bill of lading	£750	750
Owner of cargo on board Steamer "D" pays:		
His own loss	£2,000	
Less recovered from Steamer "C" . .	1,500	
Balance unrecoverable from Owner of carrying steamer "D" by reason of terms of bill of lading	£500	500
		£15,000

3. Ship and Cargo Damages, also Loss of Life involved.

Ship and cargo damages, also loss of life involved.

Steamers " E " and " F " in collision and both to blame.
" E " to extent of 3/5ths and " F " to extent of 2/5ths.

Damages.

Claims of Steamer " E " and cargo on board :

Cost of repairs and incidental expenses		£2,500
Demurrage for loss of time under repair		500
		£3,000
Damage to cargo		500
		£3,500

Claims of Steamer " F " and for loss of life on board that vessel :

Cost of repairs and incidental expenses		£5,500
Demurrage for loss of time under repair		2,000
		£7,500
Loss of life		1,500
		£9,000

Combined damages, £12,500.

Settlement.

Owner of Steamer " E " is liable for 3/5ths of claim of Owner of Steamer " F," namely :

Cost of repairs,	£5,500	3/5ths =	£3,300
Demurrage,	2,000	3/5ths =	1,200
	£7,500		£4,500

Owner of Steamer " F " is liable for 2/5ths of claim of Owner of Steamer " E," namely :

Cost of repairs	£2,500	2/5ths =	£1,000
Demurrage,	500	2/5ths =	200
	£3,000		1,200

Balance due from Owner of Steamer " E " to Owner of Steamer " F "	£3,300
Owner of Steamer " E " pays 3/5ths of loss of life on board Steamer " F " amounting to £1,500	900

Owner of Steamer " F " pays :

2/5ths of claim of owner of cargo on board Steamer " E " amounting to £500	£200	
Proportion of claim for loss of life on board steamer " F " (unless exempted from liability by contract or otherwise), namely 2/5ths of £1,500	600	
		800
		£5,000

Result.

Owner of Steamer "E" pays:		
His own loss		£3,000
Balance due to Owner of Steamer "F"		3,300
Proportion of claim for loss of life on board Steamer "F"		900
		£7,200
Owner of Steamer "F" pays:		
His own loss	£7,500	
Less balance recovered from Steamer "E"	3,300	
	£4,200	
Proportion of claim of owner of cargo on board steamer "E"	200	
Proportion of claim for loss of life on board steamer "F" (unless exempted from liability by contract or otherwise), namely 2/5ths of £1,500	600	
		5,000
Owner of cargo on board Steamer "E" pays:		
His own loss	£500	
Less recovered from Steamer "F"	200	
Balance unrecoverable from Owner of carrying steamer "E" by reason of terms of bill of lading	£300	300
		£12,500

Claims for loss of life and personal injury recovered in full in first instance from one of the two wrong-doing ships.

4. CLAIMS FOR LOSS OF LIFE AND PERSONAL INJURY RECOVERED IN FULL IN THE FIRST INSTANCE FROM ONE OF THE TWO WRONG-DOING SHIPS.

Steamers "G" and "H" in collision and both equally to blame.

Damages.

Claim of Steamer "G":	
Cost of repairs	£5000
Claims of Steamer "H" and for loss of life and personal injury on board that vessel:	
Cost of repairs	£8,000
Loss of life and personal injury (recovered in full from Steamer "G" in the first instance)	2,000
	£10,000

Combined damages, £15,000.

Settlement.

Owner of Steamer "G" is liable for ½ of claim of Owner of Steamer "H" amounting to £8,000 . . .	£4,000
Owner of Steamer "H" is liable for ½ of claim of Owner of Steamer "G" amounting to £5,000 . . .	2,500
Balance due from Owner of Steamer "G" to Owner of Steamer "H" in respect of damage to property	£1,500
Less ½ of claims for loss of life and personal injury on board Steamer "H" paid in full in first instance by Owner of Steamer "G" . .	1,000
Total amount due from Owner of Steamer "G" to Owner of Steamer "H"	£500

Result.

Owner of Steamer "G" pays:		
His own loss		£5,000
Loss of life and personal injury on board Steamer "H"		2,000
Total amount due to Owner of Steamer "H" in respect of property and loss of life and personal injury claims		500
		£7,500
Owner of Steamer "H" pays:		
His own loss	£8,000	
Less total amount recovered from Steamer "G" in respect of property and loss of life and personal injury claims . . .	500	
		7,500
		£15,000

The final result respecting the position of each owner after he has effected the settlement with his insurers is shown in Chapter VIII.

Limitation of liability.

The Maritime Conventions Act, 1911, does not affect the right of any person to limit his liability in the manner provided by law, and the provisions of the Merchant Shipping Acts containing the statutory limitation of liability require careful consideration as having an important bearing on the damages recoverable in respect of collisions at sea and the rights and liabilities of underwriters under policies of insurance.

CHAPTER IV

Statutory Limitation of Liability of Shipowners and Others

Common law liability.—Statutory limitation of liability. —History of limitation of shipowners' liability in this country. —Merchant Shipping Act, 1894, and supplementary Acts.— Foreign Law.—Limitation of liability of dock owners.— Position of ship repairers.

Shipowners' common law liability.

In order to comprehend the statutory and contractual limitation of a shipowner's liability, it is necessary to understand the common law liability as unaffected by either statute or contract. According to our common law a shipowner who carries goods on board a general ship is really in the position of an insurer, and is liable for all loss or damage to the goods unless it has been caused by some act of God or of the King's enemies, or by some defect of the goods themselves, or their packages, or through a voluntary sacrifice for the common safety.

Statutory exceptions and limitation of liability.

The statutory exceptions to a shipowner's common law liability as carrier are confined to loss or damage to goods by fire, and loss by robbery or theft of valuables which have been shipped without their true nature and value having been declared at time of shipment, and the extent of his liability for loss or damage to goods other than by fire and occurring without his actual fault or privity is limited to £8 per ton of the ship's tonnage.

These common law and statutory exceptions and this limitation of liability have been largely supplemented by special provisions inserted in bills of lading, whereby the nature and extent of a shipowner's liability as carrier have been greatly restricted and reduced.

As regards a shipowner's liability for damage to other ships and goods on board thereof by reason of the improper navigation

of his ship, the limitation in this country depends entirely upon statute.

In this country the first statutory limitation of shipowners' liability was an Act passed in 1734 (7 Geo. II, c. 15), whereby, in the case of loss of goods by theft of the master or crew, the total liability was limited to the value of the ship and her appurtenances and the freight for the voyage. In 1787 this was extended to cases of theft by persons other than the crew and to loss by fire (26 Geo. III, c. 86), and in 1814 (by 53 Geo. III, c. 159), limitation of liability in case of collision was first created, and the limitation of liability to the value of the ship, freight and appurtenances was applied to British ships for any loss caused by any act or neglect, without the fault or privity of the shipowner, to any goods carried in the ship, or to any other ship or goods on board thereof.

This limitation was preserved by the Merchant Shipping Act, 1854 (17 and 18 Vict., c. 104), which repealed these statutes. But this Act went further and fixed the same limit to damages for loss of life or personal injury, with a provision that the value of the ship should be taken at not less than £15 per ton, and the general limitation of liability was extended to foreign ships.

In order to obviate the difficulty of ascertaining the value of the ship liable, and to prevent lower-valued ships having an advantage over those of higher value, the Merchant Shipping Act of 1862 (25 and 26 Vict., c. 63) was passed, whereby an average value of £15 per ton was adopted as the limitation in the case of loss of life or personal injury, either alone or together with loss of or damage to ships and goods, and £8 per ton for loss of or damage to ships and goods alone. This Act was repealed by the Merchant Shipping Act of 1894 (57 and 58 Vict., c. 60), but it re-enacted this provision. Merchant Shipping Act, 1894.

Where there is only loss of life or personal injury concerned and the shipowner limits his liability to £15 per ton and pays that amount into court the claimants rank proportionately on that fund.

Where damage to property is involved, in addition to loss of life and personal injury, the claimants in respect of the latter receive proportionately the first £7 per ton, and if that is insufficient to satisfy their claims they rank in respect of the balance *pari passu* against the remaining £8 per ton.

There have since been several additions to the Merchant Shipping Act. By the Act of 1900 (63 & 64 Vict., c. 32) the limitation of shipowners' liability was extended to "all cases where (without "their actual fault or privity) any loss or damage is caused to "property or rights of any kind, whether on land or on water, or Merchant Shipping (Liability of Shipowners and Others) Act, 1900.

" whether fixed or moveable, by reason of the improper navigation or " management of the ship."

Persons entitled to limit their liability.

The persons entitled to limit their liability under the Merchant Shipping Act, 1894, are the owners of ships, but by the Merchant Shipping Act, 1906 (6 Edw., c. 48, s. 71) the right was extended to a charterer to whom the ship is demised, that is where the ship is hired by the charterer and by reason of the terms of the charter-party he is in control of the ship by providing the crew.

The Merchant Shipping (Liability of Shipowners) Act, 1898 (61 & 62 Vict., c. 14), section 1, provides for the extension of limitation of liability to the owners, builders, or other parties interested in any ship built at any port or place in the British Dominions, from and including the launching of the ship until its registration, but this section does not apply to the owners of any ship, or any share therein, after the ship has become a foreign ship. (Merchant Shipping Act, 1906, s. 70.)

It is important to notice that an owner, charterer or shipbuilder cannot claim the benefit of statutory limitation of liability if the damage arose from his own fault. The Merchant Shipping Act, 1894, and the supplementary Acts expressly provide that the loss or damage shall have happened " without his actual fault or privity."

The shipowner is liable for the full amount of his limited liability in respect of each distinct occasion upon which damage giving rise to liability has occurred. If the wrong-doing ship is sunk in the collision or is subsequently lost, the owner is not thereby relieved of his liability.

It should be noted that where damage is done by a ship belonging to a foreigner and it is not possible to issue a writ on him as being outside the jurisdiction of our Courts, and the ship is arrested in this country, the damages recoverable are, in practice, limited to the value of the ship and freight, the *res* arrested by the Admiralty Court. With that exception the statutory limitation according to the Merchant Shipping Act applies.

Scope of statutory limitation of liability.

That is, shortly, the present position of the statutory limitation of shipowners' liability in this country, and the provisions are applicable virtually to the whole Empire. It will be noted that the limitation of shipowners' liability to £8 per ton in respect of loss or damage to property is not confined to cases of collision and to loss of and damage to fixed and moveable property by reason of the improper navigation or management of the ship, but also extends to their liability as carriers, provided the loss of or damage to the goods occurred without their actual fault or privity.

Interest and costs.

In addition to the amount of his liability, the shipowner, charterer or shipbuilder, as the case may be, is liable for interest and costs.

Costs are in the discretion of the Court, and the general rule is that they follow the result of the action. The Maritime Conventions Act does not contain any provision as regards costs, and except in exceptional circumstances the former practice is maintained that each party bears its own costs where both vessels are to blame, though in different degrees.

Calculation of tonnage of ship

The tonnage of the ship is the registered tonnage, and in the case of a steamship it is the "registered tonnage with the addition "of any engine-room space deducted for the purposes of ascertain-"ing that tonnage." In the case of both sailing ships and steamers deduction is made for crew space in arriving at the registered tonnage. (Merchant Shipping Act, 1894, s. 77, and Merchant Shipping Act, 1906, s. 69.)

Illustrations of statutory limitation of shipowners' liability.

The following are illustrations of the application of the statutory limit of liability under the Merchant Shipping Act in the case of collisions at sea:

One steamer to blame.

1. One Steamer to Blame and Limits her Liability.

Two Steamers, "A" and "B," in collision.

Steamer "A" held alone to blame.

Claims proved against Steamer "A":

Loss of Steamer "B"	£80,000
Loss of cargo on board Steamer "B"	20,000
Loss of life on board Steamer "B"	50,000
	£150,000

Tonnage of Steamer "A," 5,000 tons.

Limit of liability at £15 per ton, £75,000.

Fund paid into Court by Owner of Steamer "A," excluding interest, £75,000.

Distributed as follows:

Life claimants receive as a first charge the proportion of fund equal to £7 per ton on 5,000 tons . . . £35,000

Balance of fund, viz. £40,000, apportioned as follows:

		Rank for—	Receive—	
Life claimants for	£50,000			
Less first charge on fund	35,000			
Balance to rank	£15,000	= £15,000	£5,217	
Owner of Steamer "B"		80,000	27,827	
Owner of cargo on board Steamer "B"		20,000	6,956	
		£115,000	£40,000	= 40,000
				£75,000

Result.

Owner of Steamer "A" pays limited liability			£75,000
Owner of Steamer "B" pays his own loss		£80,000	
Less recovered from fund		27,827	
Balance unrecovered		£52,173	= 52,173
Owner of cargo on board Steamer "B" pays his own loss		£20,000	
Less recovered from fund		6,956	
Balance unrecovered		£13,044	= 13,044
Life Claimants suffer loss of		£50,000	
Less recovered from fund:			
First charge	£35,000		
Second charge	5,217		
		40,217	
Balance unrecovered		£9,783	= 9,783
			£150,000

Both steamers to blame.

2. BOTH STEAMERS TO BLAME AND ONE LIMITS HER LIABILITY.

Two steamers "C" and "D" in collision, "D" being sunk, and both to blame:—"C" to extent of 2/3rds and "D" to extent of 1/3rd.

Damages proved.

Loss of Steamer "D"	£90,000
Loss of cargo on board Steamer "D"	30,000
Loss of life on board Steamer "D"	60,000
	£180,000
Damage to Steamer "C"	15,000
	£195,000

Liability.

Owner of Steamer "C" is liable for 2/3rds of loss of Steamer "D" amounting to £90,000			£60,000
Owner of Steamer "D" is liable for 1/3rd of damage to Steamer "C" amounting to £15,000			5,000
Balance due from Owner of Steamer "C" to Owner of Steamer "D"			£55,000
Owner of Steamer "C" is liable for 2/3rds of:			
Loss of cargo on board Steamer "D" amounting to	£30,000	=	20,000
Loss of life on board Steamer "D" amounting to	£60,000	=	40,000
			£115,000

Steamer "C" limits her liability.

Tonnage of Steamer "C" . . . 4,000 tons.
Limit of liability at £15 per ton . . £60,000.

Fund paid into Court by Owner of Steamer "C" excluding interest £60,000

Distributed as follows:

Life claimants receive as a first charge the proportion of fund equal to £7 per ton on 4,000 tons . . . £28,000

Balance of fund, viz. £32,000, apportioned as follows:

		Rank for—	Receive—	
Life claimants, viz. 2/3rds of £60,000 . .	£40,000			
Less first charge on fund	28,000			
Balance to rank . .	£12,000	= £12,000	£4,414	
Owner of Steamer "D" for balance due from Owner of Steamer "C" as follows:				
Loss of Steamer "D" £90,000—2/3rds .	= £60,000			
Damage to Steamer "C" £15,000—1/3rd	= 5,000			
		55,000	20,230	
Owner of cargo on board Steamer "D," viz. 2/3rds of £30,000		20,000	7,356	
		£87,000	£32,000	= 32,000
				£60,000

Result.

Owner of Steamer "C" pays:		
His own loss	£15,000	
Amount paid into Court	60,000	
Total	£75,000	= £75,000
Owner of Steamer "D" pays:		
His own loss	£90,000	
Less recovered from fund . . .	20,230	
Balance unrecovered	£69,770	= 69,770
Owner of cargo on board Steamer "D" pays:		
His own loss	£30,000	
Less recovered from fund . . .	7,356	
Balance unrecovered (terms of bill of lading of carrying steamer "D" exempt shipowner from liability) .	£22,644	= 22,644
Carried forward . . .		£167,414

Brought forward . . .			£167,414
Life Claimants suffer loss of . . .		£60,000	
Less amounts recovered from fund:			
First charge	£28,000		
Second charge	4,414		
		32,414	
Balance unrecovered		£27,586	= 27,586
			£195,000

Limitation of shipowners' liability in foreign countries.

The position in other countries is different. In the United States, France, Germany, Holland, and other Continental countries, the liability of shipowners, not only for damages arising out of collisions but otherwise, is, generally speaking, limited to the value of the ship and freight, and if the ship in respect of which the liability arises is lost, there may be no right of recovery from the owner. This system places owners of British ships and cargoes at a disadvantage where foreign ships are concerned. In many cases the owner of a British ship cannot obtain in a foreign Court the same measure of damages he has to give to a foreign ship in our Courts, and a British merchant may find himself without any recourse whatever for the loss of his goods if the foreign ship is lost.

Draft Convention relating to limitation of shipowners' liability.

It is to remove this inequality and provide for the unification of the law relating to the limitation of the liability of owners of sea-going vessels among maritime nations that a draft convention was originally drawn up and finally approved by the Diplomatic Conference held at Brussels in October, 1922.

We have already had experience of the working of such an international convention in the case of a collision where both vessels are to blame. The law in this country was that the whole damage done to the two ships was divided equally between the two ships, but by the Maritime Conventions Act, 1911, it was enacted that the liability for the collision shall be in proportion to the degree in which each vessel was in fault.

That Act did not affect the existing law as regards the limitation of liability, the subject being postponed for further consideration by the maritime countries which adopted the convention upon which the Act of 1911 was based. Other States which ratified that convention passed similar legislation.

A draft convention on the question of the limitation of shipowners' liability was formulated in 1913, but circumstances arising out of the war postponed further discussion until the Diplomatic

Conference at Brussels in October, 1922, when a draft convention was signed by the delegates of the different States represented, with the recommendation that their respective countries should ratify it and pass legislation to give effect to its provisions.

The main basis of the draft convention that, with some exceptions, the shipowners' liability shall be limited to an amount equal to the value of the ship, the freight and the accessories of the ship, as defined therein, provided that the liability shall not exceed an aggregate sum equal to £8 per ton of the ship's tonnage for material damage, apart from loss of life or personal injury, is not an innovation in our law. It is a reversion to the basis of the first statutory limitation of liability to the value of the ship and freight which was created in this country in the reign of George the Third.

It should be noted that in reverting to the earlier basis, the draft convention contains specific provisions relating to the ascertainment of the values of ship, freight and accessories which should obviate the difficulties experienced when the basis was previously in force without any such provision.

So far Belgium is the only country which ratified the convention that has passed legislation to give effect to its provisions, the necessary legislation in that country having been passed in 1929.

It is expected that similar legislation will shortly be passed in this and other countries.

Liability of shipowner under Carriage of Goods by Sea Act, 1924.

As regards the statutory limitation of a shipowner's liability as carrier in terms of the Merchant Shipping Act, and subject thereto, it may be remarked that under the Carriage of Goods by Sea Act, 1924 (14 & 15 Geo. 5, c. 22), in the circumstances provided for therein, his liability does not exceed £100 per package or unit.

Limitation of Shipowners' liability for damage to docks, etc.

A curious position arises as regards the right of a shipowner to limit his liability for damage done to docks, piers and wharves.

Under the Merchant Shipping (Liability of Shipowners and others) Act, 1900, section 1, a shipowner can limit his liability for any damage caused by his ship to any dock, pier or jetty by reason of the improper navigation or management of the ship, provided it occurred without his actual fault or privity, the limit of liability being the same as in the case of a ship.

By the Harbours, Docks and Piers Clauses Act, 1847, the owner of a ship is liable for the damage done by the ship, irrespective of whether there was negligence, except that he is not liable for damage done by the act of God or where the ship was not under his control or that of his agent.

The anomalous position is that if the damage was caused by the

improper navigation or management of the ship the owner can limit his liability under the Merchant Shipping Act, but if there was no negligence and the liability attached by reason of the provisions of the Harbours, Docks and Piers Clauses Act, he could not do so. (*The "Mostyn,"* 1928.)

Limitation of liability of owners of docks, etc.

Another class of persons who are entitled to limit their liability are Dock or Canal Owners and Harbour and Conservancy Authorities in respect of loss or damage being caused without their actual fault or privity to any vessel or to any goods or other things on board such vessel. The aggregate amount of their liability shall not exceed £8 per ton of the tonnage of the largest registered British ship which has within the last five years been within the area which such dock or other authority manages or over which it exercises any power. The term "dock" includes wet docks and bases, dry docks, slips, wharves, piers and jetties, etc. (Merchant Shipping (Liability of Shipowners and others) Act, 1900.)

Position of ship-repairers.

The liability, however, must attach to the party who claims limitation as "dock owner." A ship-repairer who is liable for damage to a ship whilst in his hands for repairs cannot claim limitation merely because he owns a dry dock some miles distant from his repairing yard where the ship lay when the damage occurred. (*H. & C. Grayson* v. *"City of Edinburgh,"* 1921.) Where a ship-repairer as "dock owner" is entitled to limit his liability, the area to be taken into consideration is that which contains within it the particular dock in which the damage to the ship occurred. (*The "Ruapehu,"* 1929.)

Owing to the frequent occasions on which ship-repairers have been held liable for damage to vessels in their hands for repairs due to the fault of their servants, and the fact that they are not entitled to limit their liability, except when they can do so as "dock owners," efforts are being made in this country to extend the principle of limitation of liability to them. In the United States of America ship-repairers frequently insert a provision in the contracts they make for repairing ships that they will not be liable beyond a specified amount.

CHAPTER V

Measure of Damages

Main principles.—Restitution.—Direct damages.—Consequential damages.—Remoteness of damage.—Nature and extent of damages.—Assessment of damages.—Ship, freight and cargo.—Loss of personal effects.—Loss of life and personal injury.—Interest on damages.—Rate of exchange.—Assessment of damages in foreign countries.—Illustrations of assessment of damages in this country.

Main principles of the measure of damages.

The question of the nature of the damages which are recoverable as arising from collisions at sea has such an important bearing on the Collision Clause that careful consideration of the question is desirable in order to comprehend the meaning and scope of the terms of insurances covering liability for such damages.

The main general principle as regards the measure of damages arising out of collisions at sea was stated by Dr. Lushington, the President of the Admiralty Court, in the case of *The "Clarence"* (1850) to be as follows: "The party who has sustained a damage "by collision is entitled to be put, as far as practicable, in the "same condition as if the injury has not been suffered."

This principle is subject to modification by the application of the rule as regards the division of loss where both ships are to blame, and the limitation of liability in certain circumstances.

The damages which are recoverable are those which flow directly and in the usual course of events from the collision, and they consist of direct damages and consequential damages. An instance of direct damage is the loss of or damage to ship or cargo, whilst the loss of the use of a vessel or demurrage and payments made for damage to a third vessel or a pier caused by a collision are regarded as consequential damages.

The damage, however, must not be too remote and there must not be a break in the chain of consequences. As Lord Esher said

in the case of the "*City of Lincoln*" (1889): "There may be "intermediate circumstances in a case which prevent the ultimate "damage from being a direct result of the defendant's act." The question as to whether or not the damage is too remote is one of fact to be determined according to the particular circumstances, and the following is an instance where the damage was held to be too remote; in the case of *The "Kafue"* (1920), after the collision damage repairs had been completed, the vessel was further detained to fit a wireless installation by order of the authorities, and it was held that the extra detention was not recoverable. An interesting example of the damage being held not to be too remote is that of *The "City of Lincoln"* (1889), where a sailing ship and a steamer were in collision, for which the steamer was found to be wholly to blame. In the collision the sailing ship lost her compass, chart and some navigating instruments, in consequence of which she subsequently stranded without any blame attaching to the master and crew. It was held that the stranding was a natural consequence of the collision.

A reservation requires to be made as regards the extent of the damage recoverable; it must be the reasonable consequence of the collision. Thus, if the injured ship were abandoned unjustifiably and subsequently sank, the other ship in fault for the collision is only liable for what it would have cost to repair the damage had the ship not been abandoned. (*The "Thuringia,"* 1872.) Similarly, the owners of an injured ship cannot recover the increased damage to their vessel by reason of proper steps not having been taken to repair the damage or place the vessel in a position of safety, or want of reasonable care. (*The "Marigola,"* 1929.)

Nature of the damages.

As regards the nature of the damages resulting from a collision, they consist of loss of or damage to a ship, including expenses incidental to the repairs, salvage and general average expenses, loss of the use of the vessel or demurrage, loss of and damage to cargo, loss of freight, loss of personal effects of passengers and crew, loss of life and personal injury, and damage done to a third ship or stationary property, such as a pier or a wharf, in consequence of the collision, also the cost of removing the wreck of the other vessel.

This question has such an important bearing on the claims which are recoverable under the Collision Clause and the amounts which Underwriters recover by subrogation for loss of or damage to ships and cargoes and other insurable interests that it will be well to consider the principles which govern the assessment of damages.

Actual Total Loss of Ship.

Actual total loss of ship.

If the ship is totally lost, the owner is entitled to recover the value of the ship at the time of the collision. In the case of an ordinary trading or passenger vessel this value is the market value. Such value is a matter of estimate based on the opinion of those who were acquainted with the ship or the evidence of a ship valuator. Dr. Lushington expressed the matter very clearly in 1859 when he said : " The best evidence is, first, the opinion of competent persons " who knew the ship shortly previous to the time it was lost : " that evidence is manifestly entitled to most weight, because, " assuming their competency to form a just judgment, they had a " personal knowledge of the state and condition of the vessel " herself, whereas all other persons, however skilful, could only " draw general inferences from their acquaintance with the prices " of vessels somewhat similar about the same time. The second " best evidence is the opinions of persons such as I have just de- " scribed, persons conversant with shipping and the transfers thereof."

If the vessel is of a special character or is engaged in a particular trade, the market value might not fully compensate the owner for the loss of his vessel and the basis would require to be the value of the vessel to her owner. The leading case on this point is *The " Harmonides,"* decided in 1903. The vessel was a liner ; a ship valuator gave the market value as £16,500, but the owners maintained that the value of the vessel to them, including refrigerating plant, was about twice that amount, and the Court of Appeal allowed £31,000.

Cases sometimes occur where there is no market value and the amount which the owners are awarded is the original cost less depreciation, except where another basis would be a truer estimate of the loss. In a recent case in the Court of Session (*The " Ronda "— Clyde Navigation Trustees* v. *Bowring Steamship Co.*, 1929), where a hopper barge was sunk and the owners replaced her with a new barge, the Court awarded the amount for which an efficient second-hand barge could have been obtained and adapted for the special service in which the barge was employed.

In calculating the value to be allowed account must be taken of the vessel's equipment, such as gear, sails, fuel and consumable stores, but in the case of fuel and consumable stores the value of such as would have been consumed in earning freight must be deducted from the gross freight, if there is a claim for loss of freight ; otherwise the owner would be placed in a better position than he would have been in had there been no collision.

In order to give effect to the principle that the owner of the ship that has been lost shall be placed as nearly as possible in the same position as if she had not been lost it follows that he is entitled to any freight she would have earned, less the expenses of earning it, and interest on damages.

The question of interest in this connection is closely related to freight, as both are really in the nature of profit on capital. The position is concisely stated in Marsden's *Collisions at Sea* (pp. 116, 117) as follows: "Interest on the amount of damages is allowed "from the day of the collision, if the ship was not earning freight. "If she was earning freight, the owner is entitled to the estimated "value of the ship at the time of her loss, together with the freight "she would have earned less the cost of completing the voyage or "charter, and taking into account contingencies, wear and tear, "and the special terms of the charter-party. If the voyage or "charter would have been completed before payment, the owner "is also entitled to interest from the probable date of completion. "If payment is made before that time, an allowance is made for "discount. If, however, the plaintiff's loss exceeds the amount "of the defendant's statutory liability, interest runs from the date "of collision, whether freight was being earned or not. If at the "time of her loss the ship was upon a voyage to a port from which "she was under charter to carry a cargo, and is totally lost, she is "entitled, in addition to her value, to the profits she would have "made under the charter, but not to uncertain and speculative "profits, where no employment is contracted for."

In the case of a non-trading vessel, such as a dredger or a light-ship, in addition to the value of the sunken vessel, the owner is entitled to the cost of hiring a substituted vessel for a reasonable time until the vessel can be replaced (*The "Pacuare,"* 1912), or some equitable compensation for the loss of the use of the vessel. In the recent case of *The "Ronda"* (1929), where a hopper digger barge was sunk, the Court of Session allowed a sum for the loss of the use of the barge for a certain period from the date of the collision.

Where a vessel has been sunk and the port or other authority in whose area the wreck lies has powers to light, raise or disperse the wreck under the Merchant Shipping Act, 1894, or local Acts which embody section 56 of the Harbours, Docks and Piers Clauses Act, 1847, or a provision to the same effect, and the owner of the ship that has been sunk has paid, or is liable to pay, the public authority for the expenses incurred, he can include the charges in the amount of his damages against the owner of the wrong-doing

ship. An instance of such a claim recently occurred in the River Clyde in the case of *The "Baron Vernon"* (1928).

In the case of the actual total loss of a ship, under British law the wages of the crew cease at the time of loss (Merchant Shipping Act, 1894, s. 158), and any wages paid after the loss are not legally recoverable from the owner of the wrong-doing ship, but where the owner of the vessel that has been sunk has had to repatriate the crew, or pay for the expenses of repatriation under the Merchant Shipping Act, 1906, s. 42 (1), the expenses are recoverable from the owner of the wrong-doing ship. In certain circumstances the wages of the crew may now be payable for a period after the wreck of a vessel under the Merchant Shipping (International Labour Conventions) Act, 1925, but it is doubtful whether the Act affects the liability of the owner of the wrong-doing ship.

It may be mentioned that in arriving at the value to be recovered as damages for the loss of a ship by collision, the insured value has no bearing on the question, that being solely a matter of contract between the owner of the ship and his insurers, nor is there any claim against the owner of the wrong-doing ship for unexpired insurance premiums. Those are matters which do not enter into the assessment of damages, and likewise the wrongdoer is not entitled to claim any reduction in respect of any amount recovered under a policy of insurance.

Constructive Total Loss of Ship.

Constructive total loss of ship.

When a ship has been damaged by a collision to such an extent that the owner would not be justified in repairing her, she is said to be a constructive total loss, to adopt a convenient marine insurance phrase, but the criterion is one of fact irrespective of the terms of the Marine Insurance Act, 1906, or the conditions of any policy of insurance on the ship. In that event the owner is entitled to recover from the wrong-doer for a total loss, less the damaged value of the vessel, and in addition the expense of raising the ship if she was sunk. In determining whether the vessel is a constructive total loss, regard has to be paid to all the circumstances, including the cost of temporary repairs necessary to complete the voyage and the vessel's engagements, the main question to be borne in mind being that the owner of the ship must adopt the most reasonable course, and must do everything in his power to minimize the total damages for which the wrong-doer is liable.

When the ship is not repaired and is treated as a constructive total loss, the owner is entitled to recover from the wrong-doer the

reasonable expenses incurred in dry-docking the vessel to ascertain the nature and extent of the damage sustained, and surveyors' fees for estimating the cost of repairs and the value of the ship.

The same principles apply as regards loss of freight, interest and repatriation expenses as in the case of an actual total loss.

Partial injury of ship.

Partial Injury of Ship.

When the damage sustained by a ship in consequence of a collision is not such as to render her an actual total loss or a constructive total loss, the owner is entitled to recover from the wrong-doer the reasonable expenses incurred in repairing the vessel, including expenses incidental thereto, and for the loss of employment. The damages recoverable include preliminary expenses, such as salvage and towage, discharging cargo to effect repairs to the ship, cost of temporary repairs, cost of permanent repairs, expenses of dry-docking the vessel, surveyors' fees and superintendence, agency, demurrage, etc., and it will be well to consider the basis of the assessment of damages in respect of these various items.

Preliminary expenses.

(*a*) *Preliminary Expenses.*—If the ship is so damaged by the collision as to require salvage assistance, the amount paid to the salvors, if reasonable, constitutes part of the damages recoverable from the wrong-doer. If the salvage award were made by the Admiralty Court it would not be open to question by the wrong-doer, but the amount of an award by an arbitrator under a salvage agreement or an amount agreed between the salvors and the owner of the salved ship might be questioned on the ground that it was excessive. The legal costs incurred in the salvage suit or an arbitration under a salvage agreement, or in effecting an amicable settlement of a salvage claim, if reasonably incurred, are also recoverable as part of the damages.

The same principle applies as regards the towage of a damaged vessel into a port of refuge or to her destination or extra towage incurred in entering the port of destination on account of the vessel's disabled condition.

The cost of discharging cargo to enable the ship to be repaired is also recoverable together with the cost of storage and reloading. These preliminary expenses are usually treated as general average as between the injured ship and the cargo on board and the amount recovered from the wrong-doing ship in respect thereof is credited to general average.

Temporary repairs.

(*b*) *Temporary Repairs.*—It frequently happens that temporary repairs are effected to enable a vessel damaged by collision to

complete the voyage, and thereby avoid incurring further loss, or in order to save expense in the cost of repairs by doing them at a home port instead of at a foreign port. In such circumstances the cost of the temporary repairs is recoverable as part of the damages, provided that the course adopted was a reasonable one, and has not increased the total damages the wrong-doer is called upon to pay.

Permanent repairs.

(*c*) *Permanent Repairs.*—The owner of the injured ship is entitled to have his vessel completely repaired and to recover from the wrong-doer the reasonable cost of doing so, but the cost of repairs must not have been increased by unreasonable delay in executing them, nor by their having been effected at a foreign or other port where it was not necessary to do them. No deduction is made from the reasonable cost of repairs by reason of new material having been supplied in place of old, nor in respect of the value of the vessel having been increased by the repairs effected.

The question of whether tenders for the repairs should be taken depends entirely on the circumstances of each case, and whether it was a reasonable course to adopt with the object of obtaining an efficient repair at the most reasonable cost, with due regard to the period required by the tenderer to do the repairs.

Any discount obtained in paying the repair bill requires to be deducted, also any credit for old material.

If the repairs effected make the ship as strong and serviceable as before the collision the owner is not entitled to make the wrong-doer pay for depreciation by reason of scarphing a vessel's stem or a frame, but where the damage has not been completely and permanently repaired and the selling value of the vessel has thereby been affected, as where a damaged cylinder has been patched, the owner may be entitled to an allowance for depreciation.

The cardinal principle is that the wrong-doer must pay for the damage he has done, and the fact that the owner has not paid for the cost of the repairs does not relieve the wrong-doer of his liability. If the damage sustained by the ship is such that it will have to be repaired, the fact that it has been only partially repaired or that the permanent repairs have been deferred does not deprive the owner of his right of recovery. He is entitled to recover the estimated cost of the deferred repairs at the time when they will probably be effected. (*The "Kingsway,"* 1918.)

Cost of dry-docking and incidental expenses.

(*d*) *Cost of Dry-docking and Incidental Expenses.*—The expenses reasonably incurred for towage, pilotage, boatage, riggers, coal, oil fuel and stores in transporting the vessel to and from dry dock

or place of repair, also the cost of dry-docking and shoring the vessel and dry-dock dues where the vessel requires to be dry-docked to effect repairs, and the wages of watchman and donkeyman, expenses for coal, fuel and stores consumed in connection with the execution of the repairs are part of the cost of repairs and are recoverable from the wrong-doer in their entirety, subject of course to the application of the rule of the division of loss where both vessels are to blame and the limitation of liability, with one exception, and that is where repairs relating to another accident or on owner's account which are equally necessary are effected concurrently with the collision damage repairs. In that case the expenses common to both sets of repairs are halved. This rule is based on the decision in the case of *The "Haversham Grange"* (1905). The mere fact that the owner takes advantage of the vessel being necessarily laid up for collision damage repairs to do some other work which is not obligatory and does not increase the cost of the collision damage repairs does not bring the rule of division into operation. In the case of *The "Acanthus"* (1902), where the collision damage repairs necessitated dry-docking, it was held that the owner was entitled to take advantage of the opportunity of the vessel being in dry dock to fit bilge keels without requiring to bear any portion of the cost of dry-docking.

This is an extension to the law of damages of the principle of marine insurance law on the same point, as laid down in the case of *The "Vancouver"—Marine Insurance Co.* v. *China Mutual Steamship Co.* (1886)—and the case of *The "Ruabon"—Ruabon Steamship Co.* v. *London Assurance* (1900).

Survey fees and superintendence.

(*e*) *Survey Fees and Superintendence.*—The execution of damage repairs usually necessitates employing a marine surveyor, and a reasonable charge for his fees and expenses is recoverable, in addition to an allowance for the owner's superintendent where one is employed to supervise the repairs. The fees of a classification surveyor are also recoverable, but not the fees of an underwriters' surveyor, as the owner of the wrong-doing vessel is not concerned with the question of whether the injured vessel is insured or not, but where the underwriters' surveyor is the only surveyor employed, except the classification surveyor, a reasonable allowance is recoverable (*The "Moliere,"* 1925).

Loss of freight.

(*f*) *Loss of Freight.*—Where cargo is being carried under a bill of lading or other contract of carriage, and by reason of the collision the ship or cargo are lost or damaged and the shipowner is thereby prevented from earning the freight by not delivering the

cargo at destination, he is entitled to recover the amount so lost subject to deduction for expenses saved.

Furthermore, if there was a contract to load another cargo on completion of the discharge of that in course of being carried on the voyage on which the collision occurred and the owner was prevented from earning that ulterior freight as a direct result of the collision, he would be entitled to recover the loss of that freight less the expenses that would have been incurred in earning it and deductions in respect of wear and tear and contingencies.

Wages and maintenance of crew and other expenses deducted in arriving at net profit.

(*g*) *Wages and Maintenance of Crew and Other Expenses Deducted in Arriving at Net Profit.*—If the whole or any portion of the crew are necessarily retained on board a vessel during the period she is detained in port for repairs or other purpose in consequence of a collision it conduces to clearness for their wages and cost of maintenance to be shown as a separate item in the claim, as the ordinary running expenses of a ship are usually deducted in arriving at the net profit as the basis of a claim for demurrage or loss of time. The same remark applies to coal, oil fuel and stores, but the cost of marine insurance, protection and indemnity club calls and management should not be deducted as these are running on during the period under repair as when the vessel is sailing. If, however, there is any diminution of these expenses, such as recovery of laid-up returns, a credit should be allowed in respect of the amount recovered or not expended. Another advantage of showing these expenses as separate items is that if the vessel were making no profit and the owner is not entitled to claim loss of profit, he is still entitled to recover the expense he has reasonably incurred for wages and maintenance of crew and coal, oil fuel and stores during the period the vessel was laid up for repairs.

Demurrage or loss of time.

(*h*) *Demurrage or Loss of Time.*—If a vessel is detained for repairs or other purpose in consequence of a collision the owner is entitled to recover a sum equivalent to the net profit she would have earned during that period. The law on this point was clearly stated by Lord Bowen in the case of *The "Argentino"* (1888) as follows: "A ship is a thing by the use of which money may be ordinarily "earned, and the only question in case of a collision seems to me "to be what is the use which the shipowner would, but for the "accident, have had of his ship, and what (excluding the element "of uncertain and speculative and special profits) the shipowner, "but for the accident, would have earned by the use of her. It is "on this principle alone that it is habitual to allow in ordinary "cases damages for the time during which the vessel is laid up for

"repair, in addition to the cost of the repairs themselves. But this "is merely an application of the general principle, and is not the "measure in all cases of the loss. It might conceivably, upon "the one hand, be the fact that the damaged ship would not and "could not have earned anything at all while laid up for repairs, "though such a case must necessarily be exceptional. In such "circumstances nothing ought to be allowed for demurrage. Upon "the other hand, the direct consequence of the accident might "be that the injured vessel was necessarily thrown out of her "employment, not merely during the period of repair, but for a "longer period still. In such a case the loss could not properly "be measured by the time taken in repairs alone."

This is the broad principle upon which demurrage or loss of time is allowed, and the question of the length of detention and the amount of the allowance are matters of proof as to how long the vessel has been detained, and what loss of profit the shipowner has sustained by reason of being deprived of the use of his vessel.

If the vessel is under time-charter the question is simple and the owner is entitled to recover his loss of hire, less the expenses he has saved by reason of the vessel being laid up.

If a voyage-charter or other engagement has been arranged and the vessel has not entered upon it and it is cancelled by reason of the collision, the owner is entitled to recover the amount he would have earned under the charter or engagement less the expenses he would have incurred in earning it, subject to considerations as to the employment of the vessel after the completion of the repairs and she was able to resume service.

If the owner engages another vessel to fulfil the charter and earn the freight the measure of loss is the amount paid for the use of the other vessel. Should the owner substitute another of his own vessels to fulfil the charter, the full circumstances require to be considered as regards the employment of the other vessel had she not been substituted for the injured vessel, and if she would not otherwise have been employed the owner may not be entitled to recover anything more than the extra expenses he may have incurred over and above those that he would have incurred had the original vessel fulfilled the charter. The question is really one of proof as to whether the owner has sustained any loss and, if so, what amount he is entitled to receive in order to place him as nearly as possible in the same position as if the collision had not occurred.

Where there has not been any loss of earnings under a particular charter and the owner makes a general claim for loss of the

use of his vessel, the general practice is to take the average net earnings immediately before and after the period of detention. Regard must be paid to the trade in which the vessel is employed, and, speaking generally, it is quite usual to base the calculations on three voyages before and three voyages after the period of detention.

If the collision damage repairs have not been effected but will require to be done later and the owner is entitled to recover the estimated cost of repairs, it has now been held that he is also entitled to recover damages for the loss of the use of his vessel under repair, but in arriving at the amount the probable circumstances at the time when the repairs are likely to be effected have to be taken into consideration. (*The "Kingsway,"* 1918.)

If the owners were not using the vessel for trading but for their own purposes, such as carrying their own products, the assessment of damages for the loss of the use of the vessel might be based on the current rate of freight or an allowance for loss of interest on the capital value of the vessel.

It frequently happens, especially in Scotland, that vessels engaged in fishing are damaged by collision, and the question of loss of profits is difficult to determine, and depends on the best evidence obtainable as to what profit the vessel would have made but for the collision; evidence of what other vessels earned is admissible.

Another type of case that sometimes occurs in Scotland is that of a vessel under construction and whilst still in the builders' hands. In such a case the measure of damages for delay is the loss of interest on the unpaid purchase money, plus any penalties due for non-delivery by a specified date.

The measure of damages for loss of time in the case of non-trading vessels presents difficulties. Such vessels may be employed for utility purposes, such as warships, dredgers, lightships and craft owned by harbour or port authorities, or for pleasure, such as yachts and houseboats.

As regards vessels employed for utility purposes, the main principles to be applied have been held to be as follows:

(i) If a substituted vessel or craft is hired, the owners of the injured vessel or craft are entitled to the expenses of hire and reasonable attendant expenses. (*The "Greta Holme,"* 1897.)

(ii) Where no substituted vessel or craft has been hired, the measure of damages would be the expenditure incurred for wages of crew and other necessary charges and loss of interest on capital

and depreciation. (*The "Susquehanna,"* 1926, and *The "Chekiang,"* 1926.)

(iii) In the case of a vessel or craft owned by a public authority, such as a dredger or hopper barge, which it was intended to let out on hire, the damages for loss of time are capable of being assessed on a commercial basis. Instances of such a case sometimes occur on the Clyde, and in the recent case of *The "Tamarac"* (1926) the Admiralty was awarded damages on such a basis in the case of an oil tank steamer.

In the case of yachts and houseboats and similar craft used for pleasure the same principles would apply, but unless there was a reasonable possibility of letting such a craft out on hire, the assessment would apparently be based on loss of interest on capital during the period laid up for repair.

Having explained the general principles for the assessment of damages for demurrage or loss of time, there is an important question to be considered when such time has been occupied by two sets of operations, such as other damage repairs or work on owner's account. The principles to be applied have been definitely and clearly laid down in several leading cases. In that of *The "Acanthus"* (1902), it was held that if a vessel were necessarily laid up for collision damage repairs and the owner, without interfering with those repairs or prolonging the detention under repair, took advantage to do some work on his own account which was not obligatory, he could recover the whole time occupied in effecting the collision damage repairs. The same principle was applied in the case of *The "Chekiang"* (1926), where there is a full exposition of the law on the point by Lord Sumner in the House of Lords. In that case a light cruiser was damaged by collision, and when she was shortly afterwards laid up for effecting the repairs in dry dock the Admiralty decided that it would be a suitable opportunity to effect at the same time the annual overhaul which previously it had been arranged to commence a few months later. The House of Lords upheld the Registrar's report, awarding the Admiralty an amount for the loss of use of the cruiser for the period under repair, together with a sum in respect of the pay and allowances of the officers and crew for the same period. The position is different if both operations were necessary, and according to the decision in the case of *The "Haversham Grange"* (1905), the loss of time that is common to both operations is allocated to the first occurrence. In that event, if the second operation increased the time lost, the extra loss of time would be allocated wholly to the second occurrence.

The same principles are applied in Scotland, as appears from the recent decisions in the Court of Session: *Vitruvia Steamship Co.* v. *Ropner Shipping Co.* (1925), *The "Hauk"* (1927) and *The "Colinton"* (1929).

(i) *Agency and Cost of Cablegrams and Petty Expenses.*—When a collision occurs the owner of the ship is usually put to considerable trouble in arranging the repairs, paying the accounts, providing for the care and forwarding of the cargo, etc. For his extra services and expenses in connection with such arrangements a reasonable allowance is usually made for agency and petty expenses. Work of this nature is frequently undertaken on behalf of all concerned by bodies such as Salvage Associations and a reasonable allowance is made for their services and expenses. Agency.

As regards adjusters' fees, if these relate solely to the adjustment of the claims on the policies on ship, freight or cargo, they do not constitute an item in the claim against the owners of the wrong-doing ship, but where the services are of a general nature, such as arranging surveys, instructing auctioneers and apportioning proceeds of damaged cargo, a reasonable fee has been allowed. (*The "Calderon"*—in *Admiralty Registry*—1913.) In the case of *The "Normanstar"* (1929) the adjusters' fees for preparing the ship and cargo claims for the purpose of the reference to the Registrar of the Admiralty Court were allowed as part of the costs of the reference, it being held by Mr. Justice Hill that the course adopted had saved legal expenses which would have been allowed as costs.

Loss of and Damage to Cargo. Loss of and damage to cargo.

Where goods are lost or damaged in consequence of a collision the assessment of damages arising therefrom is the same as in the case of breach of contract by the owner of a ship which is carrying the goods, and the general principle was laid down in the case of *Rodocanachi* v. *Milburn* in 1886 that it is the market value when the goods ought to have arrived that has to be adopted, irrespective of the goods having been sold "to arrive" at less or more than the market value, and if there is no market value the invoice value plus a percentage for profit is adopted, provided that the goods were intended for sale.

Where the goods lost were intended for use and not for sale, and the importer has not replaced them, or where the claimant is the shipper in whom the property in the goods remained until delivered to the consignees at final destination, effect would be given to the fundamental principle of placing the owner in the same position

as if no collision had occurred by awarding him the invoice value of the goods as representing his actual loss. This principle was adopted in the assessment of damages for loss of cargo in the case of *The "Rowan"* in the Court of Session. (*Laird Line* v. *Clan Line*, 1926.)

In that case the claimants were the owners of the cargo at the time of loss, and were either the shippers in whom the property in the goods remained until delivered to the consignees, or the consignees themselves to whom the property in the goods had passed on shipment. In both instances, in order to place the claimants as nearly as possible in the same position as if the collision had not occurred, the measure of damages was the market value of the goods at the port of destination on the date when they should have arrived, less any freight and charges which would have been paid there had the goods been delivered but were not incurred by reason of the goods having been lost.

In those instances in which the claims were by the shippers in whom the property in the goods remained at the time of loss and the invoice value for which they would have sold the goods represented the cost price together with their profit and prepaid freight and charges on the goods until delivered at destination, having regard to the short transit between Glasgow and Dublin, the market value of the goods at destination was taken to be the amount for which they would have been sold if delivered there. Such an amount also represented the claimants' actual loss, including loss of profit, less any discount which would have been allowed for a cash payment.

Where in consequence of a collision the course is reasonably adopted of forwarding the cargo to destination in another vessel, the extra expenses of forwarding would be recoverable. (*The "Achlibster,"* 1920.) And where the cargo, such as coal, is reasonably sold at a port of refuge to avoid the loss and expense which would be involved in discharging, storing and reloading it on board the vessel, for the purpose of effecting repairs to the ship, the loss by sale is recoverable on the basis of substituted expenses. (*The "Minnetonka,"* 1905.)

If the goods are damaged in consequence of a collision the measure of damages is the difference between the sound arrived market value, as in the case of a total loss, and the damaged value on arrival or the proceeds of sale at destination or elsewhere, together with any extra charges reasonably incurred for survey fees, reconditioning and warehouse rent.

If there is delay in the arrival of the goods at destination,

although they are not damaged, the rule was that there was no claim for loss of market, but the position would now seem to be one of evidence and, subject to proof that the loss of market was solely caused by the collision, such a claim would be allowed. In the case of *Dunn* v. *Bucknall Brothers* in 1902 the Court of Appeal held that " wherever the circumstances admit of calculations as to " time of arrival and the probable fluctuation of the market being " made with the same degree of reasonable certainty in the case of " a sea or a land transit, there can be no reason why damages for " late delivery should not be calculated according to the same princi- " ples in both cases."

Deterioration by delay would also be recoverable if it were proved to be the direct result of the delay caused by the collision. (*The " Parana,"* 1877.)

Loss of Personal Effects of Passengers and Crew.

Loss of personal effects of passengers and crew.

The loss is assessed on the actual value of the clothes and effects at the time of the collision and not on the original cost nor on the cost of replacement, but in some cases regard requires to be paid to the nationality of the claimant, as articles of clothing are of more or less value in some countries than in others: for example, in the United States clothing costs more than in this country. In arriving at the actual value due consideration must be given to the value of the articles to the owner, and it would not be correct to adopt the value for which the articles could be sold, except where the passenger or member of the crew lost his life in the collision and the claim is made by the next of kin, in which case a lower value is adopted than if the claim is made by the owner himself. Illustrations of the basis of assessment for loss of effects appear in the case of *The " Rowan."* (*Laird Line* v. *Clan Line*, 1926.)

Loss of Life and Personal Injury.

Loss of life and personal injury.

Damages for loss of life and personal injury are on a different footing from other damages arising out of collisions at sea and they are not dealt with by the Registrar of the Admiralty Court in England, but in both England and Scotland are dealt with by the Court and the damages to be awarded may be left to a jury.

In the case of personal injury the amount of the award would depend on the station in life of the claimant and the nature and extent of incapacity, whilst in the case of loss of life, in addition to the question of the station in life of the deceased, regard requires

to be paid to the circumstances of the next of kin or dependents of the deceased and the extent to which they have suffered materially by the death of the person.

Efforts are now being made to arrive at international agreement respecting the amount of compensation payable for loss of life at sea as the basis of a maritime convention.

Interest on damages.

Interest on Damages.

Interest allowed in Admiralty is really part of the damages, so that the injured party may as far as possible be placed in the same position as if the loss had not been sustained.

In the case of total loss of ship it runs from the date of the collision, except where freight is allowed as well as the value of the vessel, and then it is allowed from the probable date of the completion of the voyage. In the case of partial loss of ship the interest runs from the date on which the repair bill was paid, and the same date is adopted for incidental expenses and demurrage or loss of time. In the case of cargo claims interest is allowed from the date on which the goods arrived or would have arrived at their destination. For loss of effects interest is usually allowed from the same date as the principal award. In the case of claims for loss of life and personal injury the question depends on the nature of the legal proceedings and the grounds of action, as such claims are on a different footing from other damages arising out of collisions at sea.

The rate of interest allowed for ordinary collision damages is 5%, except where liability is limited, and then only 4% is allowed.

The practice as regards the allowance of interest on collision damages is in some instances different in Scotland than in England, but so far as direct damages are concerned it is practically the same.

Rate of exchange.

Rate of Exchange.

An English court of law can only award damages in English money, and if a claim is made in foreign currency, the rate ruling when the loss was sustained would appear to be the basis to adopt. In the case of *The "Volturno"* (1921), where there was a claim in foreign currency for loss of hire whilst undergoing collision damage repairs, it was held that the rate of exchange to be taken was that ruling at the time of the detention.

Assessment of Damages in Scotland and Foreign Countries.

Assessment of damages in Scotland and foreign countries.

Whilst the Scottish courts are not bound by decisions in the English courts, except the House of Lords, the principles of assessment of collision damages are the same in both countries.

In foreign countries there are material differences. In the United States of America the principles adopted approximate to our own, but there are differences. In Continental countries the question depends largely on the interpretation of the codes of law in force, and there is not that series of authoritative and illustrative decisions as we have in this country which form a basis of assessment of collision damages. It is to be hoped that having arrived at international agreement as regards the matters dealt with in the Maritime Conventions Act, 1911, it may be possible in course of time to have an international code of the law of damages arising from collisions at sea.

Illustrations of assessment of damages.

The following are illustrations of the assessment of collision damages in this country :

1. TOTAL LOSS.

Total loss.

	Claimed.	Allowed.
1. Value of vessel . . . . . (Amount allowed based on evidence of valuators.)	£9,000	£6,000
2. Expenses of repatriation of crew . .	80	80
3. Freight lost on collision voyage . . (Deduction made for expenses saved.)	600	500
4. Freight lost on voyage subsequent to collision . . . . . (Deduction made in respect of expenses saved and contingencies.)	400	200
5. Agency and expenses	25	20
6. Loss of effects of crew . . .	780	620
7. Loss of cargo, market value at destination (Deduction made for freight and landing charges saved.)	4,250	3,500
	£15,135	£10,920

Partial injury of ship and collision damage repairs effected concurrently with prior damage repairs.

2. PARTIAL INJURY OF SHIP AND COLLISION DAMAGE REPAIRS EFFECTED AT HOME PORT CONCURRENTLY WITH PRIOR DAMAGE REPAIRS AND OCCUPYING SAME PERIOD:

	Claimed.	Allowed.
1. Collision damage repairs . . . . (Deduction made for discount obtained.)	£10,000	£9,750
2. Dry-docking, shoring, undocking and dry dock dues . . . . . Halved between collision damage repairs and prior damage repairs.)	500	250
3. Towage, pilotage and boatage to and from dry dock.	100	50
4. Coal and engine-room stores consumed transporting vessel to and from dry dock and in connection with repairs .	50	25
5. Wages and maintenance of part crew retained on board during period under repair . . . . . (In lieu of wages of riggers, donkeyman and watchman.)	80	40
6. Demurrage or loss of use of vessel whilst laid up for repairs . . . . . (Allocated to prior damage repairs).	2,000	..
7. Classification surveyor's fees in connection with collision damage repairs . .	15	15
8. Underwriters' surveyor's fees and expenses in connection with collision damage repairs	60	..
9. Owners' superintendent's services in connection with collision damage repairs and expenses	35	30
10. Agency and petty expenses . . .	25	15
	£12,865	£10,175

3. PARTIAL INJURY OF SHIP, INCLUDING SALVAGE, PORT OF REFUGE EXPENSES, TEMPORARY REPAIRS, AND PERMANENT REPAIRS EFFECTED AT HOME PORT CONCURRENTLY WITH SPECIAL SURVEY WHICH WAS NOT DUE.

Partial injury of ship and collision damage repairs effected concurrently with other non-obligatory work.

		Claimed.	Allowed.
1. Salvage	£3,000		
Interest on salvage award	100		
Costs *re* salvage award	200		
		£3,300	£3,300
2. Harbour dues at port of refuge, landing, storing and reloading part cargo discharged to effect temporary repairs, surveyors' fees and agents' charges		1,000	1,000
3. Temporary repairs		400	400
4. Permanent repairs at home port		8,000	8,000
5. Dry-docking, shoring, undocking and dry-dock dues		200	200
6. Towage, pilotage and boatage to and from dry dock		75	75
7. Coal and engine-room stores consumed transporting vessel to and from dry dock and in connection with collision damage repairs		80	80
8. Wages and maintenance of part crew retained on board during period under repair		120	120
9. Demurrage or loss of use of vessel whilst laid up for repairs. (Allowance based on average net earnings for 3 voyages before and 3 voyages after period of detention.)		3,000	2,000
10. Classification surveyor's fees in connection with collision damage repairs		20	20
11. Underwriters' surveyor's fees and expenses in connection with collision damage repairs (No owners' surveyor employed.)		70	40
12. Agency		25	20
		£16,290	£15,255
13. Damage to cargo by discharge at port of refuge		500	500
14. Loss of life of seaman and injury to fireman		450	450
		£17,240	£16,205

PART II

INSURANCE AGAINST LIABILITIES TO THIRD PARTIES

CHAPTER VI

Insurance against Collision Liabilities

Liability for collision damages not recoverable on policy as a loss by perils of the seas.—Origin and development of Collision Clause.—Old form of clause.—Insertion of provision as regards costs.—Introduction of principle of cross-liabilities.—Exclusion of damage to harbours, wharves, piers and similar structures, cost of removal of obstructions, and claims for loss of life and personal injury.—Introduction of sister-ship clause.—Collision Clause only affords partial protection to shipowner.

Origin and development of collision clause.

Liability for collision damages is not covered under an ordinary insurance policy on ship as a loss by perils of the seas, and the origin of the Collision Clause, or Running Down Clause as it is sometimes called, and to a large extent its development, are the result of actions brought against underwriters in respect of claims for which the Courts held that there was no right of recovery within the terms of the policies of insurance.

The introduction of the clause was in consequence of the decision in the case of *De Vaux* v. *Salvador* (1836). In that case, a ship came into collision with a steamer, and both of them sustained considerable damage for which each vessel was found to be equally in fault. On the basis of single liability the ship had to pay a balance to the steamer, which the owner of the ship sought to recover under the policy on the ship as a particular average loss caused by perils of the sea. The Court, *per* Lord Denham, C.J., held that the owner could not recover on the ground that the liability to pay the sum in question was neither "a necessary nor "a proximate effect of the perils of the sea, but (one) growing out "of an arbitrary provision of the law of nations."

This decision did not affect the position that loss or damage sustained by collision is a loss by perils of the sea; it only applied

to the damages payable by the owner of a vessel in consequence of his vessel colliding with or doing damage to another vessel by reason of negligent navigation.

Early form of clause.

One of the earliest forms of the Collision Clause which was inserted in policies in consequence of this decision was in the following terms:

"And we the assurers do further covenant and agree that "in case the said vessel shall by accident or negligence of the "master or crew run down or damage any other ship or vessel, "and the assured shall thereby become liable to pay and shall "pay as damages any sum or sums not exceeding the value of "the said vessel and her freight by or in pursuance of any "judgment of any court of law or equity given in any suit "or action defended with our previous consent in writing, we "the assurers shall and will bear and pay such proportion of "three-fourth parts of the sum so paid as aforesaid as the sum "hereby assured bears to the value of the said vessel and "her freight."

Restriction of indemnity to three-fourths of damages.

The restriction of the indemnity to three-fourths was intended as a safeguard in order to ensure that precautions would be taken by the master and crew to prevent the vessel from colliding with another vessel, but it is doubtful if any such restriction could prevent collisions occurring, and the increased values of the property at risk and the extent of the liabilities involved have necessitated shipowners insuring against the remaining one-fourth, which is done by a full four-fourths collision clause or by entering the vessel in one of the various mutual Protection and Indemnity Associations which were established to protect and indemnify shipowners in respect of these and other liabilities.

Liability for costs.

There was an important development as a result of the decision in the case of *Xenos* v. *Fox* (1868). In that case the owner of a vessel was sued for the loss of another vessel which had been sunk as a result of a collision with his vessel, and he successfully defended the claim and thereby escaped liability, but incurred certain costs which he sought to recover under the policy on his vessel which, in addition to the sue and labour clause, contained a collision clause in the form in which it was originally introduced, whereby the underwriters agreed to indemnify the owner for three-fourths of any damages he might have to pay by reason of his vessel colliding with another vessel. Although the consent of the underwriters had to be obtained to the action being defended, there was no specific provision in the clause that the underwriters were also liable for costs in

doing so when their consent had been obtained, and in those circumstances the owner sought to recover the costs under the sue and labour clause in the policy on the ground that, had they not been incurred, there would have been a claim on underwriters under the collision clause. The Court rejected the claim on the ground that the sue and labour clause only applied to the ordinary perils covered by the policy and did not extend to those covered by the collision clause, which was a separate and distinct contract from that contained in the policy itself.

In consequence of that decision a paragraph was added to the clause providing that where the liability of the vessel for a collision had been contested with the consent of the underwriters they would pay three-fourths of the costs.

Application of principle of single liability.

A further development took place as a result of the decision in the case of *The "Balnacraig"—The London Steamship Owners' Mutual Insurance Association* v. *The Grampian Steamship Co.* (1890), where the principle of single liability was applied in connection with a claim made under the Collision Clause.

The principle of single liability was laid down in the case of *The "Khedive"—The Stoomvaart Maatschappy Nederland* v. *The Peninsular & Oriental Steam Navigation Co.* (1882), that where two vessels are in collision for which both are to blame there are not two liabilities, one on the part of the owner of each vessel to the owner of the other vessel for one half of the loss of the other, but only one liability on the part of the owner of the vessel that has done the greater damage for the difference between half of the loss of the one vessel and half of the loss of the other. The Maritime Conventions Act, 1911, provided that the division might be in other proportions than one half and one half, having regard to the degree of fault, but that Act did not affect the principle of single liability.

The application of this principle produced a peculiar result in the case of the "*Balnacraig*," the owner of which received a balance from the owner of the other vessel after deducting one-half of the damage done to that other vessel, and it was held that he was not entitled to recover under the collision clause in the policy any portion of that amount so deducted for damage done to the other vessel, because as a matter of fact he had not paid anything to the owner of the other vessel.

As a result of this decision a paragraph was added to the collision clause providing that when both vessels are to blame, then unless the liability of the owners of one or both of the vessels becomes limited by law, claims under the clause shall be settled on the

principle of cross-liabilities, as if the owner of each vessel had been compelled to pay to the owner of the other vessel such one half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of the collision.

The proviso or exception clause.

The claims recoverable under the collision clause were considerably restricted by the introduction of the proviso at the end of the clause to the effect that the clause shall not extend to any sum which the assured may become liable to pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages and similar structures, consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.

As was seen when considering the nature of the damages which an owner of a ship may be liable to pay arising out of a collision, such consequential losses may form part of the damages he may be called upon to pay, and under the collision clause as originally introduced differences arose as to whether such consequential losses were recoverable thereunder.

In the case of *Burger* v. *Indemnity Mutual Marine Assurance Co.* (1900), the ship insured came into collision with a tug, which thereby became a wreck. The wreck was removed by conservancy commissioners under statutory powers, and the owners of the tug recovered from the owners of the ship the expenses of removal which they had been compelled to pay to the commissioners. The owners of the ship sought to recover the amount from their underwriters under the collision clause in the policies which provided that the underwriters would indemnify the assured in respect of any sums that they might be found liable to pay "in respect of "injury to such other ship or vessel, etc." The Court held that the cost of removing the wreck paid by the assured as part of the collision damages was not a sum paid "in respect of injury to such "other ship or vessel" within the meaning of the collision clause, and that the assured was not entitled to recover it from the underwriters.

In *Taylor* v. *Dewar* (1864), decided in an English court, it was held that claims for loss of life which the owner of a ship had been compelled to pay by reason of his ship colliding with another ship were not recoverable under the collision clause, but in Scotland the Court of Session held that such claims were recoverable—*The Excelsior Co.* v. *Smith* (1860), and *Coey* v. *Smith* (1860).

Any uncertainty about the right of recovery under the collision

clause for such consequential losses was set at rest by the introduction of the proviso which expressly excludes them.

Sister-ship clause.

On the other hand, the application of the collision clause was extended to a collision between two vessels belonging to the same owner by the introduction of the sister-ship clause. This was in consequence of the decision in the case of *Simpson* v. *Thompson* (1877). That case was in respect of a collision between two ships belonging to the same owner, and one of them, with cargo on board not belonging to the shipowner, was sunk by the fault of the other ship. The claims exceeded the limited liability of the wrong-doing ship, and the shipowner paid into Court the amount for which he was entitled to limit his liability under the Merchant Shipping Act. The underwriters on the ship which had been sunk, who had paid a total loss, sought to recover a proportion of the limited liability fund paid into Court applicable to the value of the ship which was sunk, but the Court held that they were not entitled to any portion of the fund as the rights they acquired by subrogation on paying the total loss were no greater than those possessed by their assured, and that in that instance there were no rights as the shipowner, as the owner of the innocent ship could not sue himself as owner of the wrong-doing ship.

Collision clause only affords partial indemnity for collision liabilities.

Those are the main features respecting the origin and development of the collision clause.

Under it the shipowner is not indemnified in respect of all the damages he may be called upon to pay to third parties arising out of the negligent navigation of his vessel ; it only protects him against some of those damages, and then only to an extent not exceeding three-fourths, in the event of his vessel being in actual collision or contact with another vessel, and the right of recovery is restricted to the damages for which he is liable and has paid for injury caused to another vessel, the cargo on board that vessel, loss of freight on that cargo or the engagements of the other vessel, loss of passage money, and loss of or damage to the personal effects of passengers and crew.

Formerly there were a number of different forms of collision clause in use, but they have largely been superseded by the form of collision clause appearing in the clauses issued by the Institute of London Underwriters, and it will be well to confine attention to the terms of that particular clause.

CHAPTER VII

Institute Collision Clause

Terms of clause.—Separate contract.—Clause can be invoked in case of each collision.—Position of charterers.—Damages paid to owners of third vessel.—Clause only affords partial protection to assured.—Meaning of "collision."—Tug and tow.—Meaning of "ship or vessel" and "liable to pay and shall pay."—Indemnity confined to three-fourths.—The proviso excepting specified damages.—Special forms of clause.—Freight collision clause.—Warlike operations and collisions.

Institute collision clause.

The present form of the Collision Clause, with the Proviso and Sister-ship Clause incorporated therein, as issued by the Institute of London Underwriters, is as follows:

"And it is further agreed that if the Ship hereby Insured shall "come into collision with any other Ship or Vessel and the Assured "shall in consequence thereof become liable to pay and shall pay "by way of damages to any other person or persons any sum or "sums in respect of such collision the Undersigned will pay the "Assured such proportion of three-fourths of such sum or sums "so paid as their respective subscriptions hereto bear to the value "of the Ship hereby Insured, provided always that their liability in "respect of any one such collision shall not exceed their propor-"tionate part of three-fourths of the value of the Ship hereby "Insured, and in cases in which the liability of the Ship has been "contested, or proceedings have been taken to limit liability with "the consent in writing of the Undersigned, they will also pay a "like proportion of three-fourths of the costs which the Assured "shall thereby incur, or be compelled to pay; but when both "Vessels are to blame, then unless the liability of the Owners of "one or both of such Vessels becomes limited by law, claims under "this clause shall be settled on the principle of cross-liabilities as

" if the Owners of each Vessel had been compelled to pay to the " Owners of the other of such Vessels such one-half or other pro- " portion of the latter's damages as may have been properly " allowed in ascertaining the balance or sum payable by or to the " Assured in consequence of such collision.

" Provided always that this clause shall in no case extend to " any sum which the Assured may become liable to pay, or shall " pay for removal of obstructions under statutory powers, for " injury to harbours, wharves, piers, stages and similar structures, " consequent on such collision ; or in respect of the cargo or engage- " ments of the Insured Vessel, or for loss of life or personal injury.

" Should the Vessel hereby insured come into collision with or " receive salvage services from another Vessel belonging wholly " or in part to the same owners, or under the same management, " the Assured shall have the same rights under this policy as they " would have were the other Vessel entirely the property of owners " not interested in the Vessel hereby insured ; but in such cases " the liability for the collision or the amount payable for the services " rendered shall be referred to a sole arbitrator to be agreed upon " between the Underwriters and the Assured."

Separate contract.

The first consideration is that the effect of the words " it is " further agreed " is that the contract contained in the collision clause is a separate and distinct contract from that contained in the policy itself, and that Underwriters are liable for claims falling under that clause in addition to those recoverable under the policy.

Applicable to each collision.

Another consideration is that the agreement to indemnify the assured in respect of damages arising out of " any one such collision " entitles the assured to invoke the clause in the case of each collision in which the ship insured is involved during the currency of the policy. This point is of importance in cases where there are more than two vessels involved and the question of limitation of liability arises. The question whether what occurred constitutes one collision or two or more collisions is one of fact, and depends not on the lapse of time between the collisions, but whether they are the result of the same act of negligence. If they are, then it constitutes one collision and the limitation of liability applies to the aggregate damages arising out of that act of negligence, and there is only one claim under the collision clause. If the collisions are held not to have arisen from the same act of negligence, the owner is liable up to the extent of his liability in respect of each collision,

and consequently can claim under the collision clause in respect of each collision.

Charterers.

It will be noticed that by the addition of the words "and "charterers" after the word "assured," which appear in some forms of the collision clause, especially those used in connection with American vessels, the collision clause applies to the damages which the charterers may be called upon to pay arising out of the collision of the vessel with another ship or vessel. This may arise where the charterers provide the crew and are thereby responsible for the navigation of the ship. As was seen when the Maritime Conventions Act, 1911, was under consideration, the provisions of the Act apply to charterers by demise, and by the Merchant Shipping Act, 1906, Section 71, the right to limit liability granted by the Merchant Shipping Act, 1894, to the owners of a ship was extended to charterers who by reason of the terms of the charter-party are in control of the ship by providing the crew.

The addition of these words to the collision clause was in consequence of the decision in the case of *The "Barnstaple"—Boston Fruit Co.* v. *British & Foreign Marine Insurance Co.* (1906). In that case the charterers, who had provided the crew and had thereby been held liable for the damage caused by the collision of the vessel with another vessel by reason of the negligent navigation of the ship, sought to recover three-fourths of the damages they had paid from the Underwriters on the policy on ship containing the collision clause which the owners of the ship had effected, but the Court held that the charterers were not entitled to the benefits of the policy and could not recover; the conditions of the collision clause had not been fulfilled as the owners were not liable for the collision damages in question.

Meaning of "any other person or persons."

A further point to be noticed is that the damages recoverable under the collision clause are not confined to those paid to the owners of the other ship or vessel and the property on board, and the words "any other person or persons" extend the indemnity to damages paid to any third person in consequence of the collision, provided the damages are not of a nature as are expressly excluded in other portions of the clause. In *France, Fenwick & Co.* v. *Merchants' Marine Insurance Co.* (1915), a steamer in proceeding up a river collided with another steamer and caused her to collide with a third steamer and was held liable for the damages sustained by both steamers. The Court held that the owner of the wrong-doing steamer was entitled to recover under the collision clause three-fourths of the damages paid not only to the steamer with

which his vessel had been in actual collision, but also the damages he had paid to the owners of the third vessel, because such damages were a consequence of the first collision, and the owners of the third vessel came within the meaning of " any other person or persons " mentioned in the clause.

Collision clause only affords partial indemnity for collision damages.

A very important point to bear in mind about the collision clause is that it only affords the owners or charterers of a ship a partial indemnity in respect of the damages they may be compelled to pay by reason of the negligent navigation of the ship.

As was seen when the question of the Measure of Damages was under consideration, the damages which require to be paid by the wrong-doing ship are those which flow directly and in the usual course of events from the accident due to the negligent navigation of the ship, whether there has been actual contact or not between the vessels, and the damages consist of direct damages and consequential damages, such as loss of or damage to a vessel, including expenses incidental to the repairs, salvage and general average expenses, loss of the use of the vessel or demurrage, loss of and damage to cargo, loss of freight and passage money, loss of the personal effects of passengers and crew, loss of life and personal injury, and damage done to a third ship or stationary object, such as a pier or a wharf, in consequence of the collision, also the cost of removing the wreck of the other vessel.

It is only in respect of certain of those damages, and then only to a limited extent, that the collision clause affords protection to the assured, and the restrictions to the rights of recovery may be summarized as follows :

Actual contact.

(*a*) The provision that the ship shall " come into collision with " another ship or vessel " excludes those cases where there has not been any actual contact between the two vessels, as where through negligent navigation a vessel causes another to alter her course whereby she is driven ashore or collides with another ship, or where through excessive speed she causes another ship or a lighter to range against a wharf whereby damage is sustained.

Exception in respect of tug and tow.

An exception may require to be made where the insured vessel is in tow of a tug, and it is the tug which collides with the other vessel for which the owner of the ship is held wholly or partly liable by reason of the fact that notwithstanding that the motive power is in the tug, those on board the ship are in control of the navigation, thereby rendering the owners of the ship liable for the damage done by the tug owing to the negligence or contributory

negligence of their servants. In the case of *The "Niobe"*—*McCowan* v. *Baine* (1891), where damage was done to a third vessel by reason of the tug colliding with her, for which the owners of the ship recovered damages from both the tow and the tug, the Court held that the owners of the tow were entitled to recover under the collision clause the damages that they had been compelled to pay to the owners of the other vessel on the ground that the collision of the tug must be taken to have been a collision of the ship insured with the third vessel, the tug and tow in the circumstances being regarded as one.

Meaning of word "collision."

In marine insurance, a restricted meaning is attached to the word "collision" as applying only to actual contact of one vessel with another vessel (*Richardson & Burrows*, 1880), but the context may imply a wider meaning. In the case of *Union Marine Insurance Co.* v. *Borwick* (1895), a vessel was insured "against risk of loss or "damage through collision with any other ship or vessel, or ice, "or sunken or floating wreck, or any other floating substance, or "harbours or wharves, or piers or stages, or similar structures." The vessel was lost by being driven by the wind against a breakwater, and it was held that the loss was caused by "collision" and was therefore within the words and covered by the policy. In the case of "*Munroe*" (1893) damage caused by grounding on a sunken wreck was held to come within the meaning of the words: "damage "through collision with any other ship or vessel or . . . "sunken . . . wreck." Any doubt that might otherwise exist as regards the meaning of the word "collision" in the collision clause is removed by the use of the words "any other ship or "vessel." These words not only restrict the construction of the word "collision" but also the nature of the object damaged, for which there is a right of recovery under the collision clause, and the assured is consequently not protected against liabilities due to his vessel running into a dock wall or quay or a breakwater, or any object which cannot be described as a ship or vessel.

Meaning of expression "any other ship or vessel."

The meaning to be attached to the words "any other ship or "vessel" has already been dealt with in the Introduction, and the words may be taken to include any seagoing vessel, a lighter or barge or similar craft used in navigation, also a ferry, a floating crane or a floating elevator, but not a gas float or a floating landing-stage.

It is sometimes difficult to determine whether the object with which a vessel collides is a ship or vessel within the meaning of the clause, and regard must be had to the construction of the object and the use to which it is put.

The words also include part of a vessel's equipment, and where a vessel struck upon the anchor of another vessel this was held to be a collision with the latter (*Margetts* v. *Ocean Accident & Guarantee Corporation*, 1901), but the decision was otherwise where a steamer fell foul of nets attached to, but a mile distant from, a fishing vessel (*Bennett Steamship Co.* v. *Hull Mutual Steamship Protecting & Indemnity Association*, 1914). In *Chandler* v. *Blogg* (1898), where a steamer ran into a half-submerged barge which had just previously been run down by another vessel and was subsequently raised and repaired, that was held to be a "collision" within the terms of the policy, but the position would be different if the object were an actual wreck.

Meaning of expression "become liable to pay and shall pay."

(*b*) The words "become liable to pay and shall pay by way of "damages to any other person or persons any sum or sums in respect "of such collision" further restrict the right of recovery under the collision clause.

In the case of *Thompson* v. *Reynolds* (1857), a vessel which was liable for a collision with another vessel was sold by order of the Admiralty Court for less than her value, and the proceeds of sale were paid over to the owner of the injured vessel in satisfaction of his damages. The vessel was insured with the collision clause, and the underwriters were held to be liable under that clause for no more than three-fourths of the sum for which the vessel had been sold, that being the extent of the liability of the wrong-doing vessel and the sum which the owner must be taken to have paid to the owner of the innocent vessel.

The assured must not only be liable to pay, but must also have paid the damages, and the words consequently restrict the right of recovery under the clause in the event of the insolvency of the assured, and apart from special agreement with underwriters the latter would only be liable for their proportion of the actual amount which the owner of the other vessel had actually received from the assured.

Apart from the sister-ship clause these words would prevent the collision clause being applied to the case of a collision between two vessels belonging to the same owner as he could not be liable to pay damages to himself.

The words also prevent the assured from recovering anything under the collision clause where both vessels are to blame and he receives a sum from the other vessel, and the cross-liabilities section of the clause does not apply by reason of the liability of one or both of the vessels becoming limited by law. On the basis of single

liability the assured does not pay anything in respect of the damages to the other vessel, but receives from the other vessel which sustained the lesser damage the proportion of the limited liability fund applicable to the balance of one-half or other proportion of his damages after deducting one-half or other proportion of the damages of the other vessel.

A simple example will illustrate this important point, adopting the figures shown on pp. 44–46. Two steamers "C" and "D" are in collision, "D" being sunk, and both are to blame, "C" to the extent of two-thirds, and "D" to the extent of one-third. The value of "D" is £90,000 and the damage to "C" is £15,000. The owner of "C" limits his liability to £60,000, and the owner of "D" ranks on that fund for £55,000, arrived at by deducting the liability in respect of the lesser damage from that of the greater, and receives £20,230.

The owner of "D," not having paid anything to the owner of "C," cannot recover anything under the collision clause in respect of the proportion of the damage to "C" which was deducted in arriving at the balance for which the owner of "D" was entitled to rank on the limited liability fund paid into court by the owner of "C." The set-off is only in respect of the damages of the respective vessels and does not apply to claims for loss of life or personal injury, nor for damage to cargo unless it is the property of the shipowner.

Restriction of recovery to three-fourths

(*c*) The next restriction is that the assured can only recover three-fourths of the damages not exceeding three-fourths of the insured value. The words in the clause are "the Undersigned "(*i. e.* the Underwriters) will pay the Assured such proportion "of three-fourths of such sum or sums so paid as their respective "subscriptions hereto bear to the value of the ship hereby insured, "provided always that their liability in respect of any one such "collision shall not exceed their proportionate part of three-fourths "of the value of the ship hereby insured."

Some of the earlier forms of the clause provided that claims under the clause should be calculated on the basis of a value of not less than £8 per ton which is the maximum liability under the Merchant Shipping Act, 1894, in respect of damage to property, but the form of clause at present in general use avoids the complications arising under the old forms of the clause and protects underwriters to the extent that they cannot be liable for more than three-fourths of the insured value in respect of any one collision so far as damages in respect of property are concerned, apart from interest and costs, and if the insured value is less than the maximum

liability of £8 per ton, the owner can protect himself by insuring the balance of his liability under an excess collision clause which will be considered later.

The following are simple illustrations of the effect of this part of the clause :

1. Steamer insured for £40,000, valued at £48,000.
   Maximum collision liability for damage to property
   @ £8 per ton £32,000
   Three-fourths £24,000
   If insured value £48,000, pays £24,000.
   Amount insured £40,000, will pay £20,000.

The Assured is uninsured to extent of £4,000, and also bears the remaining one-fourth or £8,000 himself unless he recovers the latter amount from a Protection and Indemnity Association.

2. Steamer insured for £20,000, valued at £20,000.
   Maximum collision liability for damage to property
   @ £8 per ton £28,000
   Three-fourths £21,000
   Amount insured £20,000 ; pays three-fourths of vessel's insured value, or . . . . £15,000.

The Assured has to bear the difference between £15,000 and £21,000, namely £6,000, in addition to the one-fourth, namely £7,000, unless he recovers the former under an excess collision clause or is covered in respect of both amounts in a Protection and Indemnity Association.

Proviso or exception clause.

(*d*) The proviso appearing at the foot of the collision clause constitutes an extensive restriction of the liabilities of underwriters. The operation of the exception is twofold ; it prevents the underwriters from being liable for such damages when they are paid direct by the owner of the ship insured, apart from the restrictions in the earlier part of the clause, and also when they form part of the damages payable by him to the owner of the other vessel.

This exception has been the subject of several decisions. In the case of the "*North Britain*" (1894), the owners of the vessel insured, which was partly to blame for the collision with another vessel which was sunk, paid the owners of that vessel as part of the collision damages one-half of the sum which they had been compelled to pay to the authorities for removing the wreck, and they sought to recover this sum as part of their claim under the collision clause.

The Court held that the underwriters were exempted from liability for any sum which the assured was liable to pay, whether by way of damages or otherwise, for the removal of obstructions

consequent on collision, and that the exception was not restricted to any sum which the assured was liable to pay otherwise than by way of damages for the removal of obstructions consequent on collision. This decision was approved in the cases of "*The Engineer*" (1898) and *Chapman* v. *Fisher* (1904). In the latter case the steamer insured, whilst proceeding up the Clyde, ran into a steamer which was sunk in the river, and the Clyde Navigation Trustees had engaged a Salvage Company to raise her. In consequence of the collision further damage was done to the vessel, some of the Salvage Company's plant was damaged, and the cost of raising the vessel was increased by reason of the collision. The owners of the steamer were liable to pay for the depreciation in the value of the other vessel, the loss of the Salvage Company's plant and the increased cost of raising the vessel, and as these damages exceeded their liability the owners took steps to limit it and sought to recover three-fourths of the whole amount under the collision clause, but the Court, whilst admitting the items for depreciation in the value of the other vessel and the loss of the Salvage Company's plant, held that by reason of the exception the underwriters were not liable for the proportion of the limited liability fund applicable to the increased cost of raising the vessel.

The result is that the right of recovery under the collision clause, appearing in the ordinary Institute Hull Clauses, with the proviso and the sister-ship clause incorporated therein, is restricted to three-fourths of the damages paid in respect of the loss of or damage to the other vessel caused by actual contact, the cargo or other property on board thereof, the freight, passage money and engagements of the other vessel and loss of or damage to the personal effects of the passengers and crew on board that vessel, including the same losses in respect of a third vessel or other vessels which may be involved in a collision for which the insured vessel may be wholly or partly to blame, and where both vessels belong to the same owner the assured has the same right of recovery under the collision clause as if the other vessel were the property of another owner.

As regards the damages which are excluded by reason of the exceptions contained in the proviso, it may be mentioned that there are some special clauses which cover the whole or some of them.

Lake Time Clauses (Hulls).

In the Institute Lake Time Clauses (Hulls) the proviso to the collision clause does not contain the exception of "injury to "harbours, wharves, piers, stages and similar structures" in

consequence of the collision, so that that risk remains covered, and it is provided that liability under the collision clause shall extend to collisions with rafts.

Dutch Hull Form.

In the Institute Dutch Hull Form damage to stationary property is expressly included by the proviso being in the following terms :

" This clause shall also extend to any sum or sums which the " Assured may become liable to pay or shall pay for injury to " harbours, wharves, piers, stages or similar structures, but shall " in no case extend to any sum or sums which the Assured may " become liable to pay or shall pay for removal of obstructions " under statutory powers or in respect of the cargo or engagements " of the insured vessel, or for loss of life or personal injury."

Port Risk Clauses and Clauses for Builders' Risks.

The collision clause appearing in the Institute Port Risk Clauses and the Institute Clauses for Builders' Risks expressly covers excepted damages mentioned in the proviso to the ordinary form of the collision clause by the addition of the following paragraph :

" This clause shall also extend to any sum which the Assured " may become liable to pay or shall pay for the removal of obstruc- " tions under statutory powers, or injury to harbours, wharves, " piers, stages and similar structures, or for loss of life or personal " injury, consequent on such collision."

Where an insurance is effected by a shipbuilder against the risks covered by the Institute Clauses for Builders' Risks, including the collision clause and the protection and indemnity clause, and the policies are in the name of the owners, in order to obviate difficulties arising in connection with liabilities to third parties for collision damages and damage to stationary property, it is desirable that the following clause should be inserted in the policies :

" It is agreed that the shipbuilders shall not be prejudiced by " the policies being in the name of the shipowners so far as the " shipbuilders' interest in the vessel or their liability to third parties " in respect thereof are concerned."

Hull and machinery separately owned and insured.

Where the hull and machinery are separately owned and separately insured, as is frequently the case as regards vessels under construction and before delivery to the Owners, and damage is caused by the ship to another vessel or to a dock, wharf or pier, it is usual to divide the amount of the liability for the damage done between the two sets of policies on hull and machinery respectively, in proportion to the value of the two interests at the time of the accident, but, strictly speaking, having regard to the incidence of

liability of the owner of either the hull or machinery as the employer of the person who is at fault for causing the damage, the claim should attach to the policies effected by him provided they contain the collision clause or the protection and indemnity clause under whichever clause the claim falls.

Excess clause.

As regards the proportion of three-fourths of the damages which the Assured may not be able to recover under the collision clause by reason of the difference between the insured value as expressed in the policy and the amount of the vessel's statutory limitation of liability on the basis of £8 per ton, there is a clause in use to cover the deficiency.

It is the T.L.O. (Total Loss Only) and Excess Clause and it provides that in the event of " claims under the Institute Collision " Clause not being recovered in full under the policies on hull and " machinery by reason of the difference between the insured value " as expressed in those policies and the sound value of the vessel, " this policy will pay such proportion of the excess as the sum " hereby insured bears to the difference between the vessel's sound " and insured values, or to the total sum insured against excess " liabilities if it exceed such difference."

Freight collision clause.

When the question of the limitation of shipowners' liability was under consideration, it was noticed that in the United States of America and Continental countries the liability of the shipowner for damages arising out of the negligent navigation of his vessel is limited to the value of the vessel and the freight in process of being earned on the voyage during which the accident happens. In such circumstances a shipowner may be liable to pay collision damages applicable to the freight of the vessel, in addition to her value, and to protect him against such a contingency there is an Institute Freight Collision Clause in use, reading as follows:

" And it is further agreed that if the S.S. . . . shall come " into collision with any other ship or vessel and the Assured shall " in consequence thereof become liable to pay and shall pay any " sum or sums in respect of the amount of freight which is taken " into account in calculating the measure of the liability of the " Assured we the Assurers will severally pay such proportion of " three-fourths of the sum or sums so paid applying to freight as " our respective subscriptions bear to the total amount insured on " freight or to the gross freight at risk at the time of the collision " if that exceeds the total amount insured on freight.

" Provided always that the amount recoverable in respect of " any one such collision shall not exceed our proportionate part of " three-fourths of the amount insured on freight. And in cases " where the liability has been contested with the consent in writing

" of two-thirds of the subscribers to this policy in amount we will " also pay a like proportion of the costs thereby incurred or paid.

" No claim shall attach to this policy which attaches to any other " policies covering collision liabilities and should the ship be insured " for a value less than £8 per gross register ton or be wholly or partly " uninsured for collision risk it shall, for the purpose of ascertaining " the amount payable under this clause, be deemed to be insured " with the Institute Running Down Clause for a value of £8 per " gross register ton.

" Provided always that this clause shall in no case extend to " any sum which the assured may become liable to pay, or shall " pay for removal of obstructions under statutory powers, for injury " to harbours, wharves, piers, stages, and similar structures, conse- " quent on such collision ; or in respect of the cargo or engagements " of the Insured Vessel, or for loss of life or personal injury."

Balance of collision damages recoverable from Protection and Indemnity Associations.

As regards the one-fourth deducted from claims which are recoverable under the Institute Collision Clause appearing in ordinary policies of insurance on ships and the damages which are excluded from the clause, such as loss of life and personal injury, damage to stationary property, and cost of removing obstructions, and damages arising from the negligent navigation of the ship without actual contact with the other vessel or vessels, they are recoverable from the Protection and Indemnity Associations which shipowners have formed to protect and indemnify themselves against these and other risks, and the rules and conditions of these associations will be considered later.

Collisions due to hostilities or warlike operations.

During the war questions frequently arose as to whether certain collisions were in consequence of hostilities or warlike operations and whether the owners of the vessels were precluded from recovering claims arising therefrom under the marine policies by reason of the insertion therein of the F. C. & S. (Free of Capture and Seizure) Clause, reading as follows :

" Warranted free of capture, seizure, arrest, restraint or detain- " ment, and the consequences thereof or of any attempt thereat " (piracy excepted), and also from all consequences of hostilities " or warlike operations, whether before or after declaration of " war."

These cases were mainly concerned with questions of fact, and except in a comparatively limited number of instances they did not give rise to claims under the collision clause for two reasons.

The collision clause only comes into operation when the owner of the vessel is liable for damages arising out of the negligent navigation of his ship, and in the large majority of cases collisions between merchant vessels arising from sailing without lights, or in

convoy, were not due to negligent navigation, but were inevitable accidents attributable to the necessity of navigation being conducted under those unusual conditions, and the owners were consequently not liable for collision damages and no claim under the collision clause arose. For the same reason collisions between merchant vessels and warships were rarely the result of negligence on the part of either vessel.

The other reason was that if a collision was due to negligent navigation and the collision clause could thereby be brought into operation, and either or both of the vessels were engaged in warlike operations, the presence of the F. C. & S. clause in the marine insurance policies on the ship in fault, apart from any special provision in the policy or agreement to the contrary, would not prevent the owner of that vessel from recovering under the collision clause, because the exception contained in the F. C. & S. clause only excludes claims otherwise recoverable under the policy itself—that is, claims for loss of or damage to the ship insured. As was seen when considering the case of *De Vaux* v. *Salvador* (1836), which led to the introduction of the collision clause, damages which the owner of a ship is liable to pay to the owner of another vessel arising out of the negligent navigation of his ship are not recoverable under the policy as due to a peril of the sea. The collision clause is a separate and distinct contract from that contained in the policy itself, and the F. C. & S. clause does not prevent it being brought into operation because the collision occurred in the course of the navigation of the ship under conditions which are regarded as warlike operations. The proximate cause of the collision was negligence and not the warlike operation.

In the case of *Adelaide Steamship Co.* v. *The Crown* (1926), a steamer called the "*Warilda*" was requisitioned as an ambulance transport by the Admiralty and the charter-party contained the following clause:

"The risks of war which are taken by the Admiralty are those "risks which would be excluded from an ordinary English policy "of marine insurance by the following, or similar, but not more "extensive clause: Warranted free of capture, seizure, and deten-"tion, and the consequences thereof . . . and also from all "consequences of hostilities or warlike operations whether before "or after declaration of war."

The "*Warilda*" with wounded soldiers on board came into collision with a merchant vessel in March, 1918, and both vessels were damaged, for which the "*Warilda*" was found to be solely

to blame by reason of the negligent navigation of that vessel and to be liable to the other ship for damages.

The owners of the "*Warilda*" brought a claim against the Admiralty, under the terms of the insurance clause in the charter-party, for the damage sustained by their vessel in consequence of the collision, also three-fourths of the damages which they had been held liable to pay to the owners of the other vessel and three-fourths of the costs incurred in defending the collision action.

It was agreed that an ordinary English policy of marine insurance would contain the collision cause. The House of Lords held that the owners of the "*Warilda*" were entitled to recover from the Crown under the insurance clause in the charter-party the damage sustained by the vessel itself in consequence of the collision, but by a majority of the judges it was further held that the liability undertaken by the collision clause was not a risk which would be excluded by the F. C. & S. clause, and that the Crown was not liable to reimburse the owners of the "*Warilda*" for any part of the damages which they had been required to pay to the owners of the other vessel arising out of the negligent navigation of their vessel. The claim in respect of costs also failed.

The opinion of the majority of the Judges which prevailed was expressed by Viscount Cave, L.C., in the following terms: "That "liability (*i. e.* the liability of the "*Warilda*" to the other vessel) "arose, not from the collision taken by itself, but from the negligence "of the master of the "*Warilda*" which alone constituted the cause "of action; and was, therefore, not a direct and proximate "consequence of the warlike operation."

CHAPTER VIII

Adjustment of Claims under the Collision Clause

Sister-ship clause and claims for demurrage and loss of or damage to cargo.—Direct claims for loss of life and personal injury and loss of and damage to cargo.—Cross-liabilities section of clause.—Examples of claims under collision clause on basis of single-liability.—Examples of claims under collision clause on basis of cross-liabilities.—Apportionment of costs.

Sister-ship clause and claims for demurrage and loss of or damage to cargo.

There are two points to bear in mind about the Sister-ship Clause. Under it the shipowner can include his demurrage in the claim of each vessel where there is any such loss, and the clause does not affect the position of the owners of cargo on board either vessel; they remain entitled to claim directly against the shipowner for the loss of or damage to their cargo, subject to any exceptions there may be in the terms of the bills of lading of the carrying ships respectively, in the same manner as if the vessels were separately owned.

Direct claims for loss of life and personal injury and loss of and damage to cargo.

Under the Maritime Conventions Act, 1911, the claimants in respect of loss of life and personal injury may enforce their full claim against the owner of either of the two vessels in fault for the collision, and the owner of the vessel who has paid the claim in full may include one-half or other proportion of the sum so paid in his claim against the owner of the other vessel who would be liable to pay it, provided that he would not have been exempted from liability for such loss, had the claim in the first instance been made upon him, by reason of the terms of the passenger ticket or contract or otherwise.

In the United States, but not in this country, the cargo owner may do the same, and the owner of a vessel may have to pay half of the loss of cargo carried on board his own vessel by reason of the claim in the first instance having been paid by the owner of

the non-carrying vessel and then introduced into the claim of that vessel against the owner of the other vessel.

Such claims in respect of loss of life and personal injury and loss of and damage to cargo are not recoverable under the collision clause by reason of the last exception in the proviso reading: "or in respect of the cargo or engagements of the insured vessel, "or for loss of life or personal injury."

Complications may arise in such a case if one of the two vessels is totally lost, or the liability of one or both of the vessels is limited by law, but the proviso is intended to exclude such claims in whatever form the assured may be called upon to pay them in consequence of the collision of his vessel with another vessel for which he is wholly or partly to blame.

Cross-liabilities not applicable where liability is limited.

As regards the cross-liabilities section of the collision clause it will be noticed that it does not operate if the liability of the owners of one or both vessels becomes limited by law. It is impossible to apply that section in that event, because the owner of each vessel cannot be regarded as having paid to the owner of the other vessel one-half or other proportion of the latter's damages allowed in ascertaining the balance or sum payable by or to the assured in consequence of the collision, and the difficulties are increased if there are cargo or loss of life and personal injury claimants ranking on the limited liability fund. In those circumstances the claim under the collision clause has to be adjusted on the basis of single liability.

The following are simple illustrations:

1. Steamers "A" and "B" in collision and both damaged. Both steamers held equally to blame.

Damages Proved.

Claim of steamer "A":	
Cost of repairs	£4,000
Demurrage	1,000
	£5,000
Claim of steamer "B":	
Cost of repairs	£24,000
Demurrage	4,000
	£28,000

Liability.

Owner of steamer "A" is liable for half of damages of steamer "B":

Cost of repairs	£24,000	½ =	£12,000
Demurrage	4,000	½ =	2,000
	£28,000		£14,000

Owner of steamer "B" is liable for half of damages of steamer "A":

Cost of repairs	£4,000	½ =	£2,000
Demurrage	1,000	½ =	500
	£5,000		£2,500 = 2,500

Balance due from owner of steamer "A" to owner of steamer "B" £11,500

Steamer "A" limits her liability to . . . £8,000

Owner of steamer "B" receives . . . . £,8,000

Of which in respect of:

Cost of repairs	£6,857
Demurrage	1,143
	£8,000

2. Steamers "A" and "B" in collision and both damaged. Both steamers held to blame, "A" to extent of 3/4ths, and "B" to extent of 1/4th.

Damages Proved.

Steamer "A":

Cost of repairs		£2,000
Demurrage		500
		£2,500

Steamer "B":

Cost of repairs	£24,000	
Demurrage	4,000	
		28,000
		£30,500

Liability.

Owner of steamer "A" is liable for 3/4ths of damages of steamer "B":

Cost of repairs,	£24,000	3/4ths =	£18,000
Demurrage	4,000	3/4ths =	3,000
	£28,000		£21,000

Owner of steamer "B" is liable for 1/4th of damages of steamer "A":

Cost of repairs	£2,000	1/4th =	£500	
Demurrage	500	1/4th =	125	
	£2,500		£625	625

Balance due from owner of steamer "A" to owner of steamer "B" £20,375

Steamer "A" limits her liability to . . . £8,000

Owner of steamer "B" receives £8,000

Of which in respect of:

Cost of repairs	£6,857
Demurrage	1,143
	£8,000

3. The facts and the damages are the same as in illustration 2 except that the owners of cargo on board steamer "B" have a claim for £1,000.

Limited liability fund £8,000

Owner of steamer "B" ranks for	£20,375	and receives	£7,716
Owner of cargo on steamer "B" ranks for 3/4ths of £1,000	750	" "	284
	£21,125		£8,000

Owner of steamer "B" receives £7,716

Of which in respect of:

Cost of repairs	£6,614
Demurrage	1,102
	£7,716

It will be seen from these figures that irrespective of the extent of damage to steamer "A" and the different degrees of fault the amount actually paid by the owner of steamer "A" is the same, and the proportion of that amount received by the owner of steamer "B" depends on whether there were any other interests than his own ranking on the limited liability fund.

In those circumstances it could not be said "B" had in effect paid one-half or other proportion of the damages of steamer "A" to enable the owner of steamer "B" to claim under the collision clause in the policies on his steamer.

Assuming that both vessels are fully insured, that the insured value is not less than £8 per ton and the policies contain the Institute Collision Clause, the settlement under the policies is as follows:

Adjustment of claims on basis of single liability.

1. Underwriters on steamer "A":

Pay cost of repairs	£4,000
Pay 3/4ths of collision damages limited to £8,000, namely	6,000
	£10,000

Underwriters on steamer "B":

Pay costs of repairs	£24,000
Receive amount recovered from steamer "A" in respect of cost of repairs	6,857
	£17,143

2. Underwriters on steamer "A":

Pay cost of repairs	£2,000
Pay 3/4ths of collision damages limited to £8,000, namely	6,000
	£8,000

Underwriters on steamer "B":

Pay cost of repairs	£24,000
Receive amount recovered from steamer "A" in respect of cost of repairs	6,857
	£17,143

3. Underwriters on steamer "A" pay the same claim, namely, £8,000, but in the case of steamer "B" the Underwriters only receive £6,614, as against £6,857 in respect of the proportion of the amount recovered from steamer "A" by reason of cargo claimants ranking on the fund.

If there had also been cargo claims in the case of steamer "A" the cargo owners would have claimed direct from the owner of steamer "B" for ¼th of their loss, the owner of steamer "A" no doubt being protected under the terms of the bills of lading in respect of the remaining ¾ths.

Adjustment of claims on basis of cross liability.

The following figures show the amounts recoverable from underwriters under the collision clause and from the Club in the case of the illustrations of collision damages appearing in Chapter III.

It is assumed that the vessels are fully insured, that the insured value is not less than £8 per ton and that the policies contain the Institute Collision Clause, also that the vessels are fully entered in a Club.

As regards the first set of illustrations relating to claims settled between the owners of the respective vessels without limitation of liability, it has to be borne in mind that whilst these are settled on the basis of single liability, the claims under the collision clause have to be effected on the basis of cross-liabilities.

The result of the settlement between them is shown in the examples appearing in that chapter, and the final result is shown here after the owners have effected the settlement with their underwriters and the Club, so far as damages are concerned, excluding interest and costs.

1. Ship Damages only Involved.

Underwriters on steamer "A"—

Pay: Claim for Particular Average:

Cost of repairs and incidental expenses		£4,800
Less 1/3rd recovered from steamer "B"		1,600
		£3,200

Claim under Collision Clause:

Damages of steamer "B" (2/3rds of £9,000)	£6,000	
Less 1/4th	1,500	
		4,500
		£7,700

Final Result.

Owner of steamer "A" pays his own loss and balance of collision damages due to steamer "B"		£10,000
Recovers from Underwriters	£7,700	
„ from Club	1,500	
	£9,200	
Fails to recover 2/3rds of his demurrage	800	
	£10,000	

Underwriters on steamer "B"—

Pay: Claim for Particular Average:

Cost of repairs and incidental expenses		£7,500
Less 2/3rds recovered from steamer "A"		5,000
		£2,500
Claim under Collision Clause:		
Damages of steamer "A" (1/3rd of £6,000)	£2,000	
Less 1/4th	500	
		1,500
		£4,000

Final Result.

Owner of steamer "B" pays his own loss less balance of collision damages recovered from steamer "A"		£5,000
Recovers from Underwriters	£4,000	
„ from Club	500	
	£4,500	
Fails to recover 1/3rd of his demurrage	500	
	£5,000	

2. SHIP AND CARGO DAMAGES INVOLVED.

Underwriters on steamer "C"—

Pay: Claim for Particular Average:

Cost of repairs and incidental expenses		£3,000
Less 1/4th recovered from steamer "D"		750
		£2,250
Claim under Collision Clause:		
Damages of steamer "D" (3/4ths of £8,000)	£6,000	
Damage to cargo on board steamer "D" (3/4ths of £2,000)	1,500	
	£7,500	
Less 1/4th	1,875	
		5,625
		£7,875

Final Result.

Owner of steamer "C" pays his own loss, balance of collision damages due to steamer "D" and proportion of claim of owner of cargo on board that steamer		£10,500
Recovers from Underwriters	£7,875	
„ from Club	1,875	
	£9,750	
Fails to recover 3/4ths of his demurrage	750	
	£10,500	

Underwriters on steamer "D"—

Pay: Claim for Particular Average:

Cost of repairs and incidental expenses		£6,000
Less 3/4ths recovered from steamer "C"		4,500
		£1,500

Claim under Collision Clause:

Damages of steamer "C" (1/4th of £4,000)	£1,000	
Damage to cargo on board steamer "C" (1/4th of £1,000)	250	
	£1,250	
Less 1/4th	312	
		938
		£2,438

Final Result.

Owner of steamer "D" pays his own loss, less balance of collision damages recovered from steamer "C," and proportion of claim of owner of cargo on board that vessel		£3,250
Recovers from Underwriters	£2,438	
„ from Club	312	
	£2,750	
Fails to recover 1/4th of his demurrage	500	
	£3,250	

3. Ship and Cargo Damages, also Loss of Life Involved.

Underwriters on steamer "E"—

Pay: Claim for Particular Average:

Cost of repairs and incidental expenses		£2,500
Less 2/5ths recovered from steamer "F"		1,000
		£1,500

Claim under Collision Clause:

Damages of steamer "F" (3/5ths of £7,500)	£4,500	
Less 1/4th	1,125	
		3,375
		£4,875

Final Result.

Owner of steamer "E" pays his own loss, balance of collision damages due to steamer "F" and proportion of claim for loss of life on board that vessel		£7,200
Recovers from Underwriters	£4,875	
,, from Club:		
1/4th of claim under Collision Clause	£1,125	
3/5ths of claim for loss of life	900	
	2,025	
	£6,900	
Fails to recover 3/5ths of his demurrage	300	
	£7,200	

Underwriters on steamer "F"—

Pay: Claim for Particular Average:

Cost of repairs and incidental expenses		£5,500
Less 3/5ths recovered from steamer "E"		3,300
		£2,200

Claim under Collision Clause:

Damages of steamer "E" (2/5ths of £3,000)	£1,200	
Damage to cargo on board steamer "E" (2/5ths of £500)	200	
	£1,400	
Less 1/4th	350	
		1,050
		£3,250

Final Result.

Owner of steamer "F" pays his own loss, less balance of collision damages recovered from steamer "E," proportion of claim of cargo on board that vessel, and proportion of claim for loss of life on board his own vessel			£5,000
Recovers from Underwriters		£3,250	
,, from Club:			
1/4th of claim under Collision Clause	£350		
2/5ths of claim for loss of life on board his own vessel (if owner is not exempted from liability by contract or otherwise)	600		
		950	
		£4,200	
Fails to recover 2/5ths of his demurrage		800	
		£5,000	

4. Claims for Loss of Life and Personal Injury Recovered in Full in the First Instance from One of the Two Wrong-doing Ships.

Underwriters on steamer "G"—

Pay: Claim for Particular Average:			
Cost of repairs			£5,000
Less one-half recovered from steamer "H"			2,500
			£2,500
Claim under Collision Clause:			
Damages of steamer "H" (one-half of £8,000)		£4,000	
Less 1/4th		1,000	
			3,000
			£5,500

Final Result.

Owner of steamer "G" pays his own loss, loss of life and personal injury on board steamer "H" and balance of collision damages due to owner of steamer "H"			£7,500
Recovers from Underwriters		£5,500	
,, from Club:			
1/4th of claim under Collision Clause	£1,000		
½ of claim for loss of life and personal injury	1,000		
		2,000	
		£7,500	

Underwriters on steamer "H"—

Pay: Claim for Particular Average:

Cost of repairs		£8,000
Less one-half recovered from steamer "G"		4,000
		£4,000

Claim under Collision Clause:

Damages of steamer "G" (one-half of £5,000)	£2,500	
Less 1/4th	625	
		1,875
		£5,875

Final Result.

Owner of steamer "H" pays his own loss less balance of collision damages recovered from owner of Steamer "G"		£7,500
Recovers from Underwriters	£5,875	
„ from Club:		
1/4th of claim under Collision Clause £625		
½ of claim for loss of life and personal injury on board his own vessel 1,000		
	1,625	
		£7,500

Apportionment of costs.

As regards the provision in the collision clause respecting underwriters paying three-fourths of the costs, this applies to the costs applicable to the damages recoverable under the collision clause, or those which would have been recoverable thereunder had there been a claim by reason of the vessel being found to be in fault for the collision, and where claims are made by both vessels the costs require to be apportioned between the claim and the counterclaim to ascertain the proportion of the costs applicable to the particular items of damage which are recoverable under the collision clause.

Prior to the year 1889 there was considerable divergence of practice as regards the apportionment of costs in collision actions, but in that year, as the result of long-continued efforts of the late Mr. G. L. Hodgkinson, of the London Steamship Owners' Mutual Insurance Association, the Association of Average Adjusters passed the following Rule of Practice:

"That when a vessel sustains and does damage by collision, "and litigation consequently results for the purpose of testing "liability, the technicality of the vessel having been plaintiff or "defendant in the litigation shall not necessarily govern the appor- "tionment of the costs of such litigation, which shall be apportioned "between claim and counterclaim in proportion to the amount "which has been or would have been allowed in respect of each in "the event of the claim or counterclaim being established; pro- "vided that when a claim or counterclaim is made solely for the "purpose of defence, and is not allowed, the costs apportioned "thereto shall be treated as costs of defence."

A shipowner is naturally reluctant to admit that his ship is in fault for a collision, and in addition to the damage to the ship herself, for which he may have a right of recovery from underwriters, there is in most cases the question of demurrage, which involves him in an uninsured loss if it is not recoverable from the other vessel. The person responsible for the navigation of a ship is also reluctant to admit that the collision was due to his negligence. In those circumstances both sides are naturally inclined to embark on litigation to decide the question of responsibility for the collision.

With the object of avoiding unnecessary litigation and consequent expense, it is provided in the collision clause that the recovery of costs from underwriters shall be conditional on their having agreed to legal proceedings being taken. This provision must be interpreted reasonably, and as a matter of daily practice it is not taken to apply to reasonable preliminary expenses incurred in taking statements from the crew and those who may have witnessed the collision with the view of ascertaining the facts to enable the owners and their underwriters to decide whether legal proceedings shall be taken to prosecute or defend a claim; the purpose of this section of the clause is to put a check on unnecessary litigation. In many instances, especially in the case of foreign vessels, it is necessary that the jurisdiction of a particular court of law should be established by instituting proceedings and obtaining security from the owners of the other vessel.

Where proceedings are instituted it is frequently a matter of accident whether an owner is plaintiff or defendant, or pursuer and defender as they are known in Scotland. In that event it would be inequitable that if an owner was plaintiff, or pursuer, the costs he incurs should be treated as costs of recovery and borne wholly by him and his underwriters so far as they may be concerned with the damage sustained by the ship insured, and if he was defendant,

or defender, that the costs should be treated as costs of defence and as such come within the terms of the collision clause. In fact, the costs up to the determination of the question of liability are usually to a large extent common to the prosecution and defence of both claims respectively and should be apportioned rateably over the amounts involved.

It was felt that the apportionment of costs should be governed not by a mere accident as to which owner first instituted proceedings and thereby became plaintiff, but should be dealt with on a general principle, and that principle is clearly expressed in the Rule of Practice quoted above.

The circumstances respecting a collision may be such as to make it expedient to manœuvre for position, and an owner might decide to make a claim in order to deter the other side from doing so, or on the other hand he might make a counterclaim to deter the other side from proceeding with its claim. In such an event, if the claim or counterclaim is made solely for purpose of defence and it is not allowed the costs applicable thereto are treated as costs of defence and recoverable as such under the collision clause.

There may be special costs with respect to demanding or giving bail, which are not treated as part of the general costs to determine the question of liability, but are dealt with as costs of recovery or costs of defence respectively, as the case may be, and the same remark applies to the costs of proving or disputing the damages.

In the assessment of the damages costs may be incurred in connection with some particular disputed item, such as demurrage, whilst the other items in the claim are admitted, and in that event the costs incurred in proving or disputing that particular item are allocated thereto.

Claimants in respect of loss of or damage to cargo or loss of life and personal injury do not usually intervene in the litigation to determine the question of liability for the collision, which is fought out between the owners of the vessels, but they wait until that question has been determined and then lodge their claims and thereby only pay a proportion of the unrecovered costs applicable to the proof of their particular claims.

When a party is successful it does not follow that he recovers the whole of the costs he has incurred in prosecuting or defending the claim ; he only recovers the costs as taxed by the court and himself has to bear the unrecovered costs, or what are known as solicitor and client costs.

In general terms it may be said that if a party is successful he recovers his taxed costs from the other side; if he is unsuccessful he has to pay the taxed costs of the other side, in addition to bearing the whole of his own costs, whilst in certain circumstances each side has to bear its own costs.

The following is a simple illustration of the apportionment of costs of a collision action:

Two vessels, "A" and "B," are in collision and both sustain damage.

The owners of "A" institute proceedings, and thereby become plaintiffs; the owners of "B" make a counterclaim and are defendants.

"A" is found solely to blame and liable to pay the assessed damages of "B" together with the taxed costs of "B," and has to bear its own costs.

"B's" claim for cost of repairs and expenses incidental thereto amounts to £10,000, and the Registrar of the Admiralty Court allows £9,000.

"A's" claim, in the event of being held free from blame or partly to blame, would have been allowed as follows:

Cost of repairs and expenses incidental thereto, as settled by the Underwriters on the ship	£2,500
Demurrage	500
	£3,000
"B's" costs amounted to	£270
Less taxed off	70
	£200
"A's" costs amounted to	300
Total costs paid by "A"	£500

Divided as follows:

General costs to test liability for collision		£400
Special costs:		
Obtaining undertaking for bail from "B"	£8	
Giving undertaking for bail to "B"	7	
Costs of reference to Registrar for assessment of damages of "B"	85	
	—	100
		£500

Apportionment of Costs.

General costs to test liability for collision . . . £400

Divided as follows:

Costs of Recovery (prosecuting "A's" claim)	£3,000	pay £100
Costs of Defence (defending "B's" claim)	9,000	„ 300
	£12,000	£400

Costs of Recovery:

Proportion of general costs to test liability for the collision, as above	£100
Special costs—obtaining undertaking for bail from "B"	8
	£108

Payable as follows:

Underwriters on ship pay proportion applicable to cost of repairs to "A" as settled by them .	£2,500	£90
Owners of ship pay proportion applicable to demurrage . .	500	18
	£3,000	£108

Costs of Defence:

Proportion of general costs to test liability for the collision, as above	£300
Special costs—giving undertaking for bail to "B" .	7
Costs of Reference to Registrar for assessment of damages of "B"	85
Recoverable in terms of Collision Clause . .	£392

Payable as follows:

Underwriters on ship pay 3/4ths . .	£294
Protection and Indemnity Association pays 1/4th	98
	£392

Result.

Total Costs paid by "A"		£500
Underwriters on ship pay:		
Costs applicable to claim made for cost of repairs to "A" as settled by them . . .	£90	
Three-fourths of costs applicable to claim made by "B" and recoverable under the Collision Clause	294	
	£384	
Protection and Indemnity Association:		
Pays one-fourth of costs applicable to claim made by "B" and recoverable under the Collision Clause	98	
Owner pays proportion of costs applicable to his claim for demurrage	18	
(There are certain Shipowners' Defence Associations which reimburse such costs to their members where proceedings to recover demurrage are taken with their consent.)		
	£500	

In these examples the costs have been apportioned on the actual damages, and no account has been taken of the interest recovered on those damages or the interest which would have been recovered had the claim been successful.

This accords with the general practice, but as some average adjusters were inclined to include the interest as part of the damages and apportion the costs on the total of damages and interest, it has now been agreed to insert the words "excluding interest" after the word "amount" in the Rule of Practice, quoted on p. 101, in order to obtain uniformity.

CHAPTER IX

Protection and Indemnity Clause

Main purpose of clause is to cover remainder of liability for collision damages not recoverable under the collision clause.—Also covers liability for such damages as are recoverable from a Protection and Indemnity Association, and is inserted in policies on ships which are not entered in such an association.—Used to cover the liabilities of shipbuilders, ship repairers and owners of foreign ships.—Explanations of terms of clause.—Risks covered by Protection and Indemnity Associations.

Main purpose of clause.

The main purpose of the Protection and Indemnity Clause is to protect and indemnify the owners of, or other persons interested in, a vessel with respect to their liability for the remainder of the damages which they may have to pay in consequence of the negligent navigation of the vessel and which are not recoverable under the ordinary form of collision clause inserted in policies of insurance on ships by reason of the limited indemnity provided by that clause.

It has been seen that the indemnity provided by the ordinary form of collision clause, with the exceptions contained in the proviso incorporated therein, is restricted to three-fourths of the damages paid in respect of loss of or damage to another vessel caused by actual contact, the cargo or other property on board thereof, the freight, passage money and engagements of the other vessel, and loss of or damage to the personal effects of the passengers and crew on board that vessel, including the same losses in respect of a third vessel or other vessels involved in a collision for which the insured vessel is wholly or partly to blame.

As regards the remaining damages which are not recoverable under the collision clause, they consist of the balance of one-fourth of such damages which are recoverable, claims for loss of life and personal injury, damage to stationary property, and cost of removing

obstructions consequent on the collision, and damages arising from the negligent navigation of the ship without actual contact with the other vessel or vessels. These damages are recoverable from a Protection and Indemnity Association if the vessel is entered therein, and the effect of the Protection and Indemnity Clause when it is inserted in a policy of insurance on ship is to place the assured in practically the same position as if the vessel were entered in such an association.

There are persons who own or are responsible for ships, and are thereby liable to pay damages arising out of the negligent navigation or handling of the ship, who are not eligible to become members of these associations, such as shipbuilders and ship repairers. Whilst a vessel remains in the hands of the shipbuilder, and before she is handed over to the shipowner, she may collide with another vessel or do other damage in consequence of the negligent navigation or handling of the ship by the builder's servants in shifting her from one place to another in the course of construction or whilst running her trial trip. The clause has consequently been inserted in the Institute Clauses for Builders' Risks.

A ship repairer may incur similar liabilities whilst a vessel is in his hands for repairs and he has contracted to be responsible for the insurance of the vessel whilst in his charge. The Institute Port Risk Clauses are used in such an event and the Protection and Indemnity Clause is incorporated therein.

The Port Risk Clauses are frequently used to protect the shipowner's own interests when his vessel is laid up in port out of service for a more or less extended period, and the ordinary time or voyage policies have been allowed to lapse and the vessel is not entered in a Protection and Indemnity Association.

The Protection and Indemnity Clause is sometimes attached to an ordinary policy on a ship in the case of a vessel, the owner of which may either not be eligible or may not elect to become a member of a Protection and Indemnity Association, such as a foreign vessel or a vessel engaged in a special trade.

Terms of clause.

The following are the terms of the Protection and Indemnity Clause appearing in the Institute Port Risk Clauses, and, with one exception relating to loss of life and personal injury, which will be noticed later, the same clause appears in the Institute Clauses for Builders' Risks :

" It is further agreed that if the Assured shall by reason of his " interest in the insured ship become liable to pay and shall pay " any sum or sums in respect of any responsibility, claim, demand,

" damages, and/or expenses arising from or occasioned by any of " the following matters or things during the currency of this policy, " that is to say :

" (i) Loss of or damage to any other ship or goods, merchandise, " freight, or other things or interests whatsoever, on " board such other ship, caused proximately or other- " wise by the ship insured in so far as the same is not " covered by the running down clause set out above :

" (ii) Loss of or damage to any goods, merchandise, freight, " or other things or interest whatsoever, other than " as aforesaid (not being builders' gear or material or " cargo on the insured ship), whether on board the " insured ship or not, which may arise from any cause " whatsoever :

" (iii) Loss of or damage to any harbour, dock (graving or " otherwise), slipway, way, gridiron, pontoon, pier, " quay, jetty, stage, buoy, telegraph cable or other " fixed or moveable thing whatsoever, or to any goods " or property in or on the same howsoever caused :

" (iv) Any attempted or actual raising, removal, or destruction " of the wreck of the insured ship or the cargo thereof, " or any neglect or failure to raise, remove, or destroy " the same :

" (v) Any sum or sums for which the Assured may become " liable or incur from causes not hereinbefore specified, " but which are absolutely or conditionally recoverable " from or undertaken by the Liverpool and London " Steamship Protection and Indemnity Association " Limited, and/or North of England Protecting and " Indemnity Association :

" (vi) Loss of life or personal injury or payments made on " account of salvage, whether of life or property :

" the Undersigned will pay the Assured such proportion of such " sum or sums so paid, or which may be required to indemnify the " Assured for such loss, as their respective subscriptions bear to " the insured value of the ship hereby insured, provided always " that the amount recoverable hereunder in respect of any one " accident or series of accidents arising out of the same event " shall not exceed the sum hereby insured, and when the liability " of the Assured has been contested with the consent in writing " of two-thirds (in amount) of the Underwriters on the ship hereby " insured, the Undersigned will also pay a like proportion of the " costs which the Assured shall thereby incur or be compelled to " pay.

" Notwithstanding the foregoing, this Policy is warranted free " from any claim arising directly or indirectly under Workmen's " Compensation or Employers' Liability Acts and any other

" Statutory or Common Law Liability in respect of accidents to or " illness of workmen or any other person employed in any capacity " whatsoever by the Assured or others in or about or in connection " with the insured ship or her cargo materials or repairs."

When the clause is incorporated in the Institute Port Risk Clauses and the Institute Clauses for Builders' Risks its scope is not so extensive as when the clause is attached to a policy on ship containing the Institute Hull Clauses including the ordinary collision clause, with the exceptions contained in the proviso, because the collision clause appearing in the Port Risk Clauses and the Builders' Clauses does not contain the proviso with its exceptions, but expressly provides that :

" This clause shall also extend to any sum which the Assured " may become liable to pay, or shall pay for the removal of obstruc- " tions under statutory powers, or injury to harbours, wharves, " piers, stages and similar structures, or for loss of life or personal " injury consequent on such collision."

These damages which would otherwise be recoverable under the Protection and Indemnity Clause are consequently recoverable under the Collision Clause in the Port Risk Clauses and the Builders' Clauses.

Construction of clause.

The preamble to the clause quoted above defines its general scope. The words, " It is further agreed," make the clause a separate contract to those contained in the policy itself and the collision clause, and consequently the underwriters are liable up to the amount insured for claims recoverable thereunder in addition to claims recoverable under the policy itself and the collision clause. The words, " by reason of his interest in the assured ship," imply that the assured may not necessarily be the owner of the ship but one who has an insurable interest therein by reason of his contractual or other relationship in respect of the ship. The words, " become liable to pay and shall pay any sum or sums," imply a liability to a third party and exclude damage to property belonging to the assured. Prior to 1913 the preamble to the clause included the words, " or shall incur any other loss," which extended the protection afforded by the clause to losses which the assured himself might sustain for damage to his own property caused by or arising in connection with the vessel insured under the circumstances specified in the latter part of the clause, but these words were deleted from the form of the clause issued after that date for the express purpose of excluding claims for damage to the assured's own property. The old form of clause is still used when it is specially

provided for when the insurance is effected and it is known as The 1913 Protection and Indemnity Clause.

The succeeding sections of the clause are self-explanatory, but the following matters should be noted:

Section i. This covers the one-fourth of the damages not recoverable under the collision clause in respect of loss of or damage to another vessel and the property or interests on board when the insured vessel has been in actual contact with the other ship, also the whole of such damages when there has not been any actual contact, but where the ship by negligent navigation or handling causes damage to another ship and the property or interests on board.

There was a well-known case on the Clyde a few years ago which gave rise to a claim under this section of the clause appearing in the Institute Clauses for Builders' Risks. The stern of a battle-cruiser under construction was allowed to project into the river in order to bring her barbette under a large crane to fit the guns on board, thereby obstructing the outlook on the river for vessels navigating up and down. Whilst the battle-cruiser was in that position a tug came out of the wet dock in which the battle-cruiser lay and caused a vessel passing down the river to collide with a vessel coming up, both vessels sustaining damage, but there was no contact with either the tug or the battle-cruiser. The owners of the tug and the shipbuilders were both held to blame, and as the proportion of the damages payable by the tug was not great owing to the extent of her limited liability, the shipbuilders had to pay almost the whole of the damages sustained by the two vessels, and recovered them from the underwriters under this section of the clause.

Section ii. The scope of this section depends on the nature of the ship insured and the use to which she is put during the currency of the policy. For example, the insurance may be on a ship in process of being broken up, or on a floating grain elevator or a floating pontoon crane. It will be noticed, however, that it excludes builders' gear or material or cargo on board the insured ship, which is an important exception if the vessel is in a ship repairer's hands for repair.

Section iii. The damage referred to in this section need not necessarily be done directly by the vessel insured, and the words "howsoever caused" make it clear that the liability for the damage is covered if it arose indirectly by the insured vessel causing another vessel to do the damage by reason of collision or negligent

navigation, and furthermore the owner of a ship may be liable for damage done to a harbour or similar structure where there is no negligence, by reason of the provisions of the Harbours, Docks and Piers Clauses Act, 1847.

Section iv. This section is restricted to the ship insured or the cargo on board, and the cost of removal of the wreck of another ship sunk in collision for which the insured ship is to blame is recoverable under the special addition to the collision clause appearing in the Port Risk Clauses and the Shipbuilders' Clauses mentioned above and covering liability for the cost of removal of obstructions consequent on the collision.

Section v. This section applies not only to sums which the assured may become liable to pay, but also those he may incur, from causes not previously specified and which are recoverable under the terms of either or both of the two Protection and Indemnity Associations mentioned, and the scope of the protection afforded by such Associations will be considered later.

Section vi. This section does not appear in the clause attached to the Institute Clauses for Builders' Risks, and Section v of the Protection and Indemnity Clause in those clauses expressly excludes "loss of life and personal injury," but as "loss of life and personal "injury consequent on such collision" are expressly covered under the collision clause the exception clearly applies to loss of life or personal injury caused otherwise than by collision, and loss of life or personal injury in respect of workmen is expressly excluded in the final section of the clause.

Protection and Indemnity Associations.

Inasmuch as the Protection and Indemnity Clause covers the assured against any sum or sums for which he may become liable or incur from causes not otherwise specified in the clause, but which are recoverable from or undertaken by either or both of the two named Associations, a short description of these Associations in general and the risks covered by them may be helpful to an understanding of the full scope of the protection afforded by the clause.

There are a number of Protection and Indemnity Associations established in this country, the object of which is to protect and indemnify the members against claims and losses arising from or occasioned by certain specified occurrences for which they may be liable in respect of vessels in which they are interested as owners or otherwise and which are entered in the association.

The associations are conducted on a mutual basis, and the working and other expenses of the association and the amounts paid in respect of claims recoverable by the members within the

terms of the association are payable by the members in proportion to the tonnage of the vessels entered by them respectively.

The vessels entered in the association are deemed to be insured to their full value against all perils covered by an ordinary Lloyd's policy containing the usual collision clause, and no claim which is recoverable under such a policy can attach to the association.

No claim or loss arising from the actual fault of the member, or due to an event happening with his privity, can be recovered from the association.

The extent of the indemnity granted by these associations is generally that in respect of claims for which the member is entitled to limit his liability to £15 per ton for loss of life or personal injury or £8 per ton for damage to property under the Merchant Shipping Act, he is protected to the same extent, and in addition for interest and costs which he may have properly incurred or become liable to pay in connection with such claims, and in respect of claims for which such limitation of liability is not available, the member is protected up to an amount not exceeding £30 per ton on the vessel's gross tonnage, in respect of each and every occasion on which a claim may arise.

Deductions are made from some claims in certain circumstances and in some instances claims under a specified amount are not recoverable, but the conditions in these respects vary and there is no uniform basis applicable to all associations.

The risks covered are of a varied nature, and those relating to liabilities to third parties may be briefly summarized as follows:

1. *Loss of Life and Personal Injury.*

The protection covers the member's liability arising under Common Law, Merchant Shipping Laws or Employers' Liability Acts in respect of passengers on board the vessel and persons employed in or about the vessel, or persons other than those mentioned, whether on board any ship or elsewhere, who are injured in circumstances which render the member liable in respect of the vessel entered in the association.

2. *Collision Risks.*

The risks covered are those of loss of or damage to any other ship or vessel, and the property on board thereof, arising from the negligent navigation or improper management of the vessel entered in the association, including the cost of removing obstructions and

damage to harbours, wharves, piers, stages or similar structures consequent thereon.

Protection can also be obtained in respect of the excess liability for collision damages where the value for which the vessel is insured under the policies on ship is less than £8 per ton.

3. *Cargo Risks.*

The protection extends to loss of or damage to cargo arising from unauthorized deviation, unseaworthiness or improper navigation or management of the vessel and negligence in the care and custody of the cargo for which the member is liable in respect of the entered vessel.

4. *Harbour Damage Risks.*

The member's liability is covered in respect of any damage done to any harbour, dock, pier, quay, jetty, landing-stage, telegraph cable, or other fixed or moveable thing.

5. *Wreck Risks.*

The member is protected against the cost of raising or removing the wreck of the entered vessel or the cargo on board, to the extent that it may not be recoverable under the policy on the vessel or otherwise.

6. *Life and other Salvage and General Average Risks.*

The protection afforded covers the member's liability for life salvage to the extent that it is not otherwise recoverable, also the cargo's proportion of any salvage, general average and special charges the member has had to pay so far as he is disentitled to recover the amount from the cargo interests in consequence of the negligent navigation of the vessel.

This summary is not exhaustive, and is intended merely as a general indication of the protection afforded by these associations against liabilities to third parties.

CHAPTER X

Miscellaneous Insurances against Liabilities to Third Parties

Liabilities arising from breach of contract and for damage occurring during performance of contract.—Liabilities of shipowners to owners of cargo for damages arising from breach of contract of affreightment.—Form of insurance to cover such liabilities.—Position of lightermen.—Insurance on average disbursements.—Liability of shipbuilders and engineers for damage to another contractor's property.—Engineers' guarantee risks.—Form of insurance to cover them.—Exclusion of consequential damages.—Ship repairers' liabilities.—No statutory limit of liability.—Scope of insurance to cover ship repairers' liabilities.

Liabilities arising from breach of contract and for damage occurring during performance of contract.

In addition to the liabilities arising from torts, such as damage caused by the negligent navigation of a ship, and those imposed by certain statutory powers or local regulations respecting damage to harbours and docks and the cost of removing the wreck of a vessel, which have so far been considered, there are liabilities arising from breach of contract and for damage occurring during the performance of a contract, from which the contractors are not exempt by the terms of the contract.

These latter liabilities may arise in connection with the carriage of goods by sea and inland waters, and the construction and repairing of ships, and it is desirable to consider the different forms of the insurances which are effected against such liabilities.

Liabilities of shipowner as carrier.

In order to comprehend the liabilities connected with the carriage of goods by sea it is necessary to understand the obligations which a shipowner impliedly undertakes, apart from express contract, when he receives goods to carry them for a remuneration.

At common law it is implied that the shipowner is to carry and deliver the goods in safety and be answerable for all loss or damage happening to them whilst in his custody, unless caused by some act of God, or of the King's enemies, or by some defect in

the goods themselves, or through a voluntary sacrifice for the common safety, and he cannot rely on those exceptions if he has not exercised due care to avoid or guard against the cause of loss or damage, or the vessel has deviated from the proper course of the voyage, or was unseaworthy or unfit for the carriage of the goods.

There are certain statutory exceptions to, and limitation of, these common law liabilities. By the Merchant Shipping Act, 1894, Section 502, the owner of a British sea-going ship is not liable to make good to any extent whatever any loss or damage happening without his actual fault or privity where any goods on board his ship are lost or damaged by reason of fire, or for the loss by robbery or theft of valuables, such as bullion, jewels or precious stones, which have been shipped without the true nature and value of them having been declared at the time of shipment, and the Act by Section 503 further limits the extent of his liability for loss of or damage to goods, either alone or together with loss of or damage to other vessels, to £8 per ton of the vessel's registered tonnage.

In addition to these common law and statutory exceptions and limitation of liability, shipowners have incorporated a number of further exceptions and a more extended limit of liability in bills of lading and charter-parties, but their power to do so is restricted by the Carriage of Goods by Sea Act, 1924, which applies to the carriage of goods by sea from any port in Great Britain or Northern Ireland to any other port, whether in or outside Great Britain or Northern Ireland, and in respect of which a bill of lading or similar document of title is issued. Carriage of Goods by Sea Act, 1924.

The Act deals only with the carriage of goods by sea and the liabilities and immunity of the shipowner whilst the goods are on board the ship, and it does not apply to any land portion of the transit.

There is no absolute warranty of seaworthiness which if not complied with renders the contract void, but the shipowner is bound before and at the beginning of the voyage to exercise due diligence to make the ship seaworthy, properly man, equip and supply the ship and make the holds and other parts of the ship in which goods are carried fit for them and he is not liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence in those respects.

Having regard to the stringent principles of our common law respecting unauthorized deviation, which puts an end to the contract of affreightment and precludes the shipowner from relying on

any of the exceptions therein and gives the cargo owner a right of action for damages arising from such unauthorized deviation, it is provided in the Act that the shipowner shall not be responsible for loss or damages arising or resulting from saving or attempting to save life or property at sea, and any reasonable deviation authorized by the contract of affreightment shall not be deemed to be a breach of contract, but otherwise the provisions of our common law as regards deviation apply.

Subject to the limit of liability provided by the Merchant Shipping Act, 1894, the maximum amount of the shipowner's liability for loss of or damage to or in connection with goods under the Carriage of Goods by Sea Act, 1924, is £100 per package or unit, unless the nature and value of the goods have been declared by the shipper before shipment and inserted in the bill of lading, and by agreement another maximum amount than that mentioned may be fixed provided that it is not less than £100 per package or unit.

The Act draws a clear line of demarcation between the carrier's risks respecting the care and custody of the goods for which the shipowner is liable and the navigation risks for which he is not liable, provided that the loss of or damage to the goods by those risks was not primarily due to the want of due diligence on his part to provide a seaworthy ship and for the proper care of the cargo, and that the voyage has been performed without any unauthorized deviation.

Classification of risks applicable to carriage of goods by sea.

Viewing these liabilities and immunities with regard to the question of insurance, the risks may be divided into three classes:

1. Navigation and other risks from which the shipowner is exempt from liability and which are insurable risks and are covered under a marine insurance policy on goods effected by the owner of the goods, such as loss of or damage to goods arising or resulting from the negligence of the crew in the navigation or management of the ship, fire, perils of the sea, act of God, war, strikes, riots and civil commotions, and latent defects not discoverable by due diligence.

2. Carriers' risks relating to the care and custody of the goods whilst on board the ship, such as loss or damage due to bad handling or stowage, insufficient ventilation, pilferage and theft. By means of an additional clause, carriers' risks are frequently covered under an ordinary marine insurance policy on goods effected by their owner, and the insurers on payment of the claim under the policy for such loss or damage become subrogated to any rights the assured may possess against the shipowner if he is not exempted from

liability by reason of the terms of the contract of carriage. Shipowners usually protect themselves against their liability for these carriers' risks from which they are not exempt by reason of the terms of the contract of carriage by becoming members of a Protection and Indemnity Association which covers such risks.

3. Risks resulting from breach of contract, such as carrying on deck cargo contracted to be carried under deck, shipping cargo on board a damaged ship which has not been repaired, dry-docking or repairing a ship with cargo on board for the shipowner's own purposes and when not occasioned by some accident on the voyage, and unauthorized deviation.

Insurance against shipowners' liability for breach of contract.

There are several important considerations to be borne in mind in effecting an insurance against shipowners' liability arising out of a breach of contract.

The breach of contract puts an end to the contract of affreightment and precludes the shipowner from relying on any of the exceptions contained therein, irrespective of whether or not the loss or damage arose from an excepted risk, and the inability to rely on the exceptions operates throughout the whole period covered by the contract until the goods are delivered to the receivers.

It is consequently necessary that the insurance should not be effected on the goods themselves against total loss or perils of the seas and risks covered by an ordinary policy on goods. Such a policy is not sufficient to fully protect the shipowner against his liabilities arising from the breach of contract. The policy should clearly and expressly state that it is intended to cover any liability the shipowner may have incurred by reason of the particular occurrence ; it should cover the whole transit from shipment until delivery of the goods to the receivers ; the policy should not contain the F. C. & S. clause, and the memorandum or franchise clause in the policy should be deleted, and it should be provided that the underwriters shall pay general average and charges not otherwise recoverable and any costs incurred with their consent in defending a claim made upon the assured in respect of the risks covered.

Where the vessel is entered in a Protection and Indemnity Association and it is possible to communicate with the association it is desirable to do so before effecting the insurance, in case the risk is covered by the rules, or the association is prepared to regard the risk as covered or desires an insurance effected at its expense.

Whenever an insurance against such liabilities is effected, expert advice is desirable, preferably that of an average adjuster.

The following is a general form of insurance against shipowners' liability to owners of cargo arising from a breach of contract, which can be adapted to meet the particular circumstances:

"S.S. . . . .

"From . . . to . . . and until the completion of the "discharge of cargo and the termination of the shipowners' respon- "sibility within the terms of the bills of lading.

"This insurance is intended to cover the liability, if any, of "the owners of the S.S. . . . to the owners of the cargo loaded "on board thereof in consequence of (state the circumstances), "including any contribution to general average, salvage, salvage "charges, sue and labour charges, or other charges, arising from "any accident or accidents to the ship on the voyage, which by "reason of the aforesaid circumstances may not be recoverable "from the owners of the cargo.

"To pay claims in full up to the amount insured for any liability "on the part of the shipowners to the owners of the cargo, also "costs incurred, with the Underwriters' consent, in defending a "claim made upon the assured in respect of the risks covered by "the policy.

"Seaworthiness of the ship admitted as between assurers and "assured.

"Against marine and war risks.

"Delete 3% clause."

Lighterman's liability as common carrier.

A lighterman when he receives goods for carriage incurs the liability of a common carrier, but in one respect he is in a different position from that of a shipowner, as the statutory exception of fire under Section 502 of the Merchant Shipping Act, 1894, does not apply to a lighter but only to a sea-going ship. Section 503 of the Act relating to the limitation of liability to £8 per ton, however, does apply to a lighter because the word "sea-going" does not appear in that section and the term "ship" includes a lighter.

As the liabilities of common carriers bear heavily upon them for losses which are not the consequence of negligence, lightermen usually exempt themselves from liability when they contract to carry goods, and the owners of the goods protect themselves by inserting the following provision in their policy on the goods: "The assured are not to be prejudiced by any agreement exempting "lightermen from liability." The effect of this provision is that if the loss is proximately due to a peril insured against, the assured's claim under the policy is not prejudiced by the insurers, on paying the claim, having no recourse against the lightermen by reason of the exemption contained in the lighterage agreement.

When goods are carried by lightermen without any agreement exempting them from liability and they desire to effect an insurance against their liabilities to the owners of the goods, it should be expressly stated in the policy that the insurance is one against liabilities to third parties and the insurance should not be one merely on the goods themselves, as was seen when considering the cases referred to on p. 4.

Insurance on average disbursements.

When an accident has occurred which gives rise to a general average contribution, the shipowner may incur liability for expenses, and be unable to recover from the owners of the cargo the whole or a portion of those expenses applicable to the cargo by reason of a subsequent accident causing loss of or damage to the cargo, and thereby reducing or extinguishing the cargo's contributory value to the expenditure which falls to be apportioned over the values of the property at the termination of the voyage. The subsequent loss of or damage to the cargo extinguishes or reduces the shipowner's lien on the cargo for its proportion of the expenses. In order to protect himself and the other parties concerned against such a contingency, the shipowner usually effects an insurance on Average Disbursements, and in the event of any subsequent accident he recovers under that policy the amount he has been unable to recover from the owners of the cargo by reason of the contributory value of the cargo having been reduced or extinguished by reason of the subsequent accident. The Marine Insurance Act, 1906, section 3 (2) (*b*), expressly permits such an insurance.

Shipbuilder's liabilities to other contractors.

As was seen when considering the Institute Clauses for Builders' Risks, a shipbuilder by incorporating those or similar clauses in the policies on a ship under construction protects himself in respect of his liabilities for damages arising from the negligent navigation or management of the ship, for cost of removal of obstructions and other risks covered by the collision clause and the protection and indemnity clause, but he may incur further liabilities to a sub-contractor or another contractor, against which he should insure if he wishes to be fully protected.

There are two main classes of Building Contracts. In the one case the shipbuilder contracts with the shipowner to supply a complete vessel, consisting of hull, outfit, main and auxiliary machinery, and the shipbuilder subcontracts for the supply of certain parts. The main contract is thus between the shipbuilder and the shipowner; the shipbuilder is responsible for the complete vessel, and there is no contractual relationship between the shipowner and the sub-contractor. In those circumstances, the shipbuilder usually

provides that the insurance he effects shall cover the property of the sub-contractor after delivery to the shipbuilder, leaving the sub-contractor to insure the parts whilst under construction by him and prior to delivery to the shipbuilder.

In the other case the main contract is between the shipbuilder and/or marine engineer for the construction of the hull and/or machinery, and the shipowner contracts for certain specific parts independently of the main contract. In those circumstances there is no contractual relationship between the shipbuilder and/or marine engineer and the other contractor. For example, a shipowner might contract with a shipbuilder for the hull and main machinery of a vessel and with other contractors for the insulation and refrigerating machinery. Each contractor would insure his own property, but liabilities may arise between the different contractors which are not covered by the ordinary policies effected on the property. For example, through the negligence of the shipbuilders' servants damage might be caused to the insulation, or in fitting the refrigerating machinery on board damage might be done to the hull through the negligence of the refrigerating engineers' employees.

In such circumstances the insurance policies effected sometimes contain a clause that the insurers shall have no recourse against another contractor or sub-contractor, but it is too indefinite to be completely effective. Irrespective of any question of insurance, it is very desirable in the first place that the contracts for the building of the vessel and the supplying of subsidiary parts should clearly define the rights and liabilities of the respective contractors, especially as regards damage caused to one contractor's property by the employees of another contractor engaged in connection with the building of the vessel. That having been done, the insurance policies effected by the different contractors can be expressed in such terms as will not only cover the particular property or parts supplied, but also the liability of one contractor to the other so far as loss and damage to the property is concerned. Where such third party risks are covered it is desirable that the actual clause in the contract under which that liability arises should be incorporated in the policy, so that the underwriters may be under no misapprehension as to the nature and extent of the liability against which the assured intends to be indemnified.

It is desirable that not only the contract itself, but also the policy, should clearly express the intention of the parties as regards liability or exemption from liability for consequential damages,

such as delay arising from an accident occurring during the performance of the contract. In the case of *Alison & Co.* v. *Wallsend Slipway Co.* (1927) there was a contract to supply a cylinder for a vessel and the cylinder supplied was defective and had to be replaced, involving detention of the vessel. In the absence of clearly expressed terms in the contract as regards consequential damages, the suppliers of the cylinder were held liable for damages for delay arising out of the cylinder proving defective.

Shipbuilders' or engineers' liabilities under guarantee clause in building contract.

Contracts for supplying the machinery and/or boilers for a vessel usually contain a guarantee clause whereby the contractors undertake for six or twelve months or other period to make good any defective material or workmanship or exceptional wear and tear in any part of the machinery or boilers supplied. Defective design is sometimes added, and the contractor's liability is usually confined to the cost of replacement in this country and excludes liability for consequential damages.

Contractors frequently insure against their liabilities under the guarantee clause in the contract, and in that event it is important that the actual guarantee clause in the contract should be incorporated in the policy so as to clearly define the nature and extent of the liabilities against which it is intended that the underwriters should indemnify the assured. The contract of indemnity between the underwriters and the assured contained in the policy is thus made co-extensive with the contract between the contractor and his principal contained in the guarantee clause in the contract for the supplying of the machinery and/or boilers.

The exception as regards consequential damages refers to such damages as delay arising from the replacement of the defective part or damages sustained by other parties arising from the breakdown of the machinery or boilers, such as damage done to another vessel or a pier by reason of the vessel becoming out of control in consequence of the breakdown. The exception does not apply to damage to another part of the machinery resulting from the original breakdown where there has been no break in the chain of causation. For example, a defective blade in the rotor of a turbine may break off and cause other blades to carry away, and in the course of the rapid revolutions of the rotor the broken blades may cause damage to the turbine casing. The whole of the damage constitutes one accident, and it would be incorrect to regard the damage to the other blades and the turbine casing as consequential damage coming within the exception.

Ship repairers' liabilities.

As regards the liabilities of ship repairers to third parties, a policy on the ship under repair which contains the Institute Port Risk Clauses, whilst it protects the assured against the risks covered by the collision clause and the protection and indemnity clause, does not afford a full protection, and the ship repairer may be liable to the owner of the ship for damage caused by the negligence of his employees which is not covered by the policy, and damage caused to any cargo on board is expressly excluded. Another matter to be borne in mind is that a ship repairer cannot limit his liability for damage to the ship and any cargo on board to £8 per ton unless he is entitled to do so as the owner of a dock within the meaning of the Merchant Shipping (Liability of Shipowners and Others) Act, 1900.

The liabilities of ship repairers are consequently very extensive, and in recent years ship repairers have been held liable for large amounts, especially in the case of passenger vessels and large cargo steamers.

Ship repairers in this country have been endeavouring for some time past to obtain an extension to them of the provisions in the Merchant Shipping Acts relating to the limitation of liability of shipowners, charterers, shipbuilders, dock owners and harbour authorities, but so far they have been unsuccessful.

In most other countries there is no limitation of ship repairers' liability. In contracting for the repair of a ship, ship repairers frequently stipulate that their liability shall not exceed a specified amount, and that is now usually done in the United States of America.

In effecting an insurance to cover ship repairers' liability for loss of or damage to the ship and cargo on board and liability for damage done by the ship to the property of others, special regard requires to be paid to the nature and extent of the liabilities against which it is intended that the assured should be indemnified by the underwriters so that the policy may clearly express the intention of the parties.

PART III

MARITIME CONVENTIONS

CHAPTER XI

Introductory

Means of obtaining uniformity in commercial and maritime law.

As seaborne trade is mainly international, the adoption of uniform commercial and maritime laws in all countries is highly desirable as a means of removing trade barriers and promoting commercial intercourse within the Empire and between different countries.

Commercial law may be regarded as a set of rules for the construction of the various documents used by commercial people. If such rules, embracing commercial and maritime laws, could be made of international application, it would remove the uncertainty and friction arising from the differences at present existing between the laws of different countries. To some extent this result has already been obtained as regards maritime law. That community of interest which has long existed among seafaring people of different races has evolved a large measure of uniformity in that branch of law, and there is a common rule of the road at sea and uniform regulations with respect to navigation, with liability for their infringement, whereby the risks of loss of life and property are immeasurably reduced.

As regards maritime law, experience has proved that the best means of reaching uniformity is by means of international conferences, attended by business representatives from the different countries interested, where the particular question under consideration can be fully examined and discussed from a practical point of view, and after the preliminary work has been completed, and definite resolutions have been adopted as the basis of an international law, for legislative effect to be given to them after they have been duly reviewed, and in case of need revised, at a further official conference attended by the accredited legal and other representatives of the Governments of the various countries.

The International Law Association, composed of legal and non-legal members in all parts of the world and with its headquarters

in London, and the Comité Maritime International (International Maritime Committee), operating from Antwerp, convene conferences of their respective members periodically for the consideration of questions of international importance, with respect to which it is thought to be in the public interest that there should be a uniform law operating in all countries.

Several of the draft codes drawn up and adopted at these business conferences have been referred to the Diplomatic Conference which meets at Brussels from time to time, and is attended by legal and other delegates appointed by the various Governments interested. The draft conventions approved by the Diplomatic Conference are recommended by the delegates for ratification by their respective Governments as the basis of legislation, whereby international uniformity of law on the particular subject can be obtained.

Convention relating to division of loss where both vessels are to blame for collision.

In addition to a common rule of the road at sea and uniform regulations with respect to navigation, a further measure of international uniformity was established by the Maritime Conventions Act, 1911, and similar legislation in other countries. The Act was based on the conclusions reached at an international conference held at Brussels in the previous year, and it deals with the division of loss arising from collisions at sea through the fault of both vessels. Where it is possible to discriminate, the liability is in proportion to the degree of fault, otherwise the liability is apportioned equally between the two vessels. The Act also deals with the liability of the two vessels for loss of life and personal injury, and with some matters relating to salvage.

Bills of Lading Convention.

The Bills of Lading Convention embodies The Hague Rules, 1922, which were drawn up at the conference of the International Law Association held at The Hague in September, 1921, with the amendments adopted at the conference of the Comité Maritime International held in London in October, 1922. It provides the basis of a uniform law relating to the carriage of goods by sea. Legislative effect has already been given to this convention in this country by the Carriage of Goods by Sea Act, 1924. In other parts of the Empire legislation has been passed similar to the British Act, and other countries have signed the Convention and either have or are introducing provisions in their national laws to give effect to its terms.

Other Conventions.

In addition to these two conventions there are several other conventions which have been approved by the Brussels Diplomatic Conference and are waiting for legislative effect to be given to them.

The conventions deal with the following subjects: (1) Limitation of Shipowners' Liability; (2) Maritime Mortgages and Liens; and (3) Immunity of State-owned Ships.

The only country which so far has given legislative effect to those conventions is Belgium, the Acts having come into force in 1929.

The conventions relating to the Limitation of Shipowners' Liability and Maritime Mortgages and Liens were, subject to certain reservations, approved by the Diplomatic Conference held at Brussels in 1922. At a further conference held in 1926 certain amendments were made in the latter convention, and another convention was then approved relating to the Immunity of State-owned Ships.

Limitation of shipowners' liability.

As regards limitation of shipowners' liability, the existing differences between British and foreign laws are very considerable and lead to uncertainty and difficulty. The statutory limitation of shipowners' liability in this country—and the provisions are applicable virtually to the whole Empire—is to the effect that where by reason of the improper navigation or management of a ship any loss or damage is caused to property or rights of any kind, whether on land or on water, the owner of the ship shall not be liable for more than £15 per ton of the vessel's tonnage in the case of loss of life and personal injury, either alone or together with loss of or damage to ship and goods or other property, and £8 per ton for loss of or damage to ship and goods or other property alone, provided it has occurred without his fault or privity. The limitation is not confined to cases of collision, but extends to shipowner's liability as carrier.

The position in other countries is different, and shipowners' liability, not only for damages arising out of collisions but otherwise, is generally speaking limited to the value of the ship and freight, and if the ship in respect of which the liability arises is lost, there may be no right of recovery at all from the shipowner whose ship was at fault. This system places owners of British ships and cargoes at a disadvantage where foreign ships are concerned. In many cases the owner of a British ship cannot obtain in foreign Courts of Law the same measure of damages he has to give to a foreign ship in our Courts, and a British merchant may find himself without any recourse whatever for the loss of his goods if the foreign ship is lost.

This inequality is removed by the Convention, which provides that the liability shall be limited to an amount equal to the value

of the vessel, the freight (taken at 10% of the value of the vessel), and certain accessories consisting of amounts recovered from third parties, provided that it shall not exceed £8 per ton for material damage, with a further amount of £8 per ton for loss of life or personal injury.

Maritime mortgages and liens.

The laws in operation in different countries with regard to mortgages on ships and the liens which attach to ships vary widely, and the differences often have serious consequences for bankers and others who lend money on the security of ships, and for those who have claims against ships for services rendered or for damage done. The terms of the Convention have given rise to considerable diversity of opinion, but as a result of the amendments made at the Brussels Diplomatic Conference in April, 1926, the general view is that it represents the best method of uniformity obtainable in the circumstances.

Immunity of State-owned ships.

The Convention on the immunity of State-owned ships deals with a very pressing injustice arising from certain states having engaged in the ordinary business of shipowning, at the same time maintaining the immunity from arrest and legal processes applicable to warships and Government ships used for non-commercial purposes. Generally speaking, the purport of the Convention is to put commercial ships owned by a government in the same position as those owned by a private shipowner, while establishing definite principles respecting claims for salvage and collision and other matters in the case of ships used for government non-commercial purposes, such as warships, hospital ships, etc.

Imperial Conference, 1926.

The first two conventions were considered by the General Economic Sub-Committee of the Imperial Conference held in 1926, and its reports thereon were approved by the Imperial Conference in November of that year by the adoption of the following resolution:

> "The Imperial Conference notes with satisfaction the "progress which has been made towards the unification of "maritime law in regard to the limitation of shipowners' "liability and to maritime mortgages and liens by the pre- "paration at Brussels of the draft international conventions "on these subjects, and having regard particularly to the "advantages to be derived from uniformity recommends these "conventions to the consideration of the Governments of the "various parts of the Empire."

Crown Proceedings Committee.

The subject of the immunity of State-owned ships did not come before the Imperial Conference, but the question of the position

of the Crown as a litigant in this country was referred by the Lord Chancellor to a Committee, and the report of the members of that Committee was published in 1927. To the report there was attached a Draft Bill to assimilate the procedure in certain Crown proceedings in the High Court to the procedure in actions between subjects, to make the Crown liable to be sued in tort, to amend the law with respect to limitation of liability and salvage in the case of Crown ships, and to make other provision with respect to the enforcement of rights by or against the Crown. The Bill has so far not been passed into law.

Ratification of Conventions.

Frequent representations have been made to the British Government that the three conventions approved by the Brussels Diplomatic Conference should be ratified, and it is understood that Draft Bills will be prepared, but circumstances prevent any indication being given by the Government as regards the probable date of the introduction of such legislation.

Preparatory to the meeting of the Imperial Conference in the latter part of 1930, the Chamber of Shipping of the United Kingdom, in conjunction with other public bodies, has been formulating a British business policy to be submitted to the Imperial Conference, and amongst other matters it is recommended that the three conventions should be ratified and legislative effect given to them throughout the British Empire.

Operation of Dominion Legislation and Merchant Shipping Legislation.

The readjustment of the relations between the different parts of the Empire, following on the declaration of the equality of status made by the Imperial Conference in 1926, rendered it necessary to examine the question of uniform shipping legislation throughout the Empire.

The Report of the Imperial Conference, 1926, declared in relation to the United Kingdom and the Dominions that:

> "They are autonomous communities within the British "Empire, equal in status, in no way subordinate one to another "in any aspect of their domestic or external affairs, though "united by a common allegiance to the Crown, and freely "associated as members of the British Commonwealth of "Nations."

The Imperial Conference also considered the question of Merchant Shipping legislation, and pointed out that, while uniformity of administrative practice was desirable and essential as regards the Merchant Shipping legislation of the various parts of the Empire, it was difficult to reconcile the application of certain provisions of the Merchant Shipping Act, 1894, with the present

constitutional status of the several members of the British Commonwealth of Nations.

Since the year 1911 the practice has been followed that enactments of the Parliament of the United Kingdom in relation to merchant shipping and navigation are not applicable to the Dominions, and as the general position is that the Dominions are empowered by their Constitutions to enact laws relating to merchant shipping, subject to varying limitations, there is an element of uncertainty as to the powers of the Dominion Governments to pass Merchant Shipping legislation, which has given rise to disputes in the Courts. There is further a danger of the development of differences in the Merchant Shipping laws of this country and the Dominions.

For instance, as regards the Maritime Conventions relating to the limitation of shipowners' liability and maritime mortgages and liens, if a Dominion Parliament desired to confer upon its courts jurisdiction and authority to enforce rules of law based on those Conventions, it might find it impossible to enact legislation fully implementing the conference agreement in respect of foreign ships or ships registered outside the Dominion, as these fields of jurisdiction are partially, if not wholly, reserved for the Parliament of the United Kingdom. In respect of mortgages and liens there might even be difficulty in regard to ships registered in the Dominion itself.

A Conference was accordingly organized to consider amongst other matters this particular question, the terms of reference being :

> " To consider and report on the principles which should
> " govern, in the general interest, the practice and legislation
> " relating to Merchant Shipping in the various parts of the
> " Empire, having regard to the change in constitutional status
> " and general relations which has occurred since existing laws
> " were enacted."

The report of the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation was published in January, 1930, and its main recommendation respecting Merchant Shipping is that legislative restrictions imposed by the Merchant Shipping Act, 1894, should be removed so that there will no longer be any doubt as to the full and complete power of any Dominion Parliament to enact legislation in respect of merchant shipping, nor will Dominion laws be liable to be held inoperative on the ground of repugnancy to laws passed by the Parliament of the

United Kingdom. The ground would thus be cleared for co-operation amongst the members of the British Commonwealth of Nations on an equal basis in the form of agreements, for a term of years, as to the uniformity of laws throughout the Empire. It is pointed out that this course is specially favoured as regards shipping matters, as shipping is a world-wide interest, in which uniformity is desirable, and the establishment of a tribunal is advocated as a means of determining differences and disputes between members of the British Commonwealth, not only as regards Merchant Shipping, but also the operation of legislation generally.

It is further recommended that the Dominions should be empowered to establish Admiralty Courts under their own laws, and that so far as possible there should be uniform jurisdiction and procedure in all Admiralty Courts throughout the Empire.

As regards the Maritime Conventions relating to the limitation of shipowners' liability and maritime mortgages and liens, which have been signed but not yet ratified by the British Government, the report refers to the resolution passed by the Imperial Conference of 1926 in favour of their adoption, and proceeds:

> "To enable these Conventions to be ratified considerable "changes will be necessary in the existing law in the United "Kingdom with regard to Admiralty matters. We think it "desirable that all Dominions should consider the changes "proposed by the Conventions, and, if the Dominions or any "of them adopt them, the opportunity might be taken, having "regard to the fact that the new legislation will be necessary, "of endeavouring to come to some agreement that uniformity "should exist upon all matters of Admiralty jurisdiction and "procedure, and for this purpose it would seem the law of "the United Kingdom might form a useful basis for such an "agreement."

Reciprocity.

In some quarters, however, it is thought that, so far as foreign countries are concerned, changes in the law should only be made on the basis of reciprocity. As uniformity can only be attained by compromise, and the advantages to be derived from international conventions are essentially those which result from the general adoption of international uniformity of law and the abolition of those differences in the laws of various countries which give rise to difficulties, uncertainties and delay in the settlement of claims, and to unfair competitive advantages which the present laws give to foreign shipowners and merchants, it would be well to stipulate that any legislation passed in this country on the basis of these

conventions should only take effect when similar legislation is adopted by the other principal maritime countries.

Proposed Convention relating to insurance of passengers.

Another subject which has been engaging the attention of the International Maritime Committee is that of the insurance of passengers in respect of loss of life and personal injury arising from accidents at sea.

The present position is unsatisfactory from the point of view of the passenger and also that of the shipowner, owing to the want of uniformity in the laws of different countries, the extent of liability, and the expensive litigation which frequently results from casualties involving loss of life whereby the compensation recovered is considerably reduced by legal expenses.

A scheme has been evolved which will be submitted to the next conference of the International Maritime Committee to be held at Antwerp in August, 1930.

The scheme is intended to be operated by incorporation in the passenger contract ticket, and to be of international application.

The main provision is that in consideration of the acceptance by the passenger of the benefits of insurance conferred, in lieu of his rights under the maritime and common law, the shipowner, at his own expense, will insure the passenger in certain specified amounts against all risks of accident causing death or personal injury which may occur during the course of the voyage which is to be taken to cover the whole period whilst the passenger is on board the vessel, including embarkation and disembarkation.

In the event of the passenger sustaining personal injury by accident the shipowner will pay him the stipulated amount, and in the case of the death of the passenger the amount would be paid to such person as might have been nominated by the passenger or his next of kin.

The insurance is intended to cover all accidents, even when the same are occasioned by the negligence or want of reasonable care of the passenger, except wilful misconduct. In like manner, the shipowner is not to be relieved from liability for the consequences of his own wilful misconduct.

The rights of the passenger against third parties are not to be affected or prejudiced, but if the third party be the owner of a ship the passenger agrees to transfer to the carrying shipowner all his rights against such other shipowner, and the carrying shipowner shall thereby become entitled to enforce such rights against such other shipowner up to the amount paid by the carrying shipowner to the passenger.

All claims under the insurance shall be paid in full by the shipowner without regard to any limitation of liability which he may be entitled to claim in respect of any action for damages according to the law of the flag of the ship or the law of any other country.

If the passenger desires to be insured against accident causing death or personal injury in any sum greater than that specified, he will have the facilities, through the shipowner or his agent, of insuring with an insurance company of recognized standing, at the current rate of premium, an additional amount not exceeding ten times the sum specified.

Except as regards the premium for this additional insurance, if required, the cost of the insurance is to be borne by the shipowner in consideration of the passenger surrendering his rights of action against the carrying shipowner under the maritime or common law. Payment of a claim is not dependent on the proof of negligence of the shipowner or his servants; the mere fact that the accident happened on the voyage will entitle the passenger or his representative to recover the amount insured, irrespective of any question of the limitation of shipowner's liability.

Criminal liability for collisions at sea.

A further subject to be discussed at the conference of the International Maritime Committee at Antwerp in August, 1930, is the question of criminal liability in the case of collisions at sea which involve loss of life or personal injury. At present there is an element of uncertainty under international law as regards the right of a state to exercise criminal jurisdiction over a foreigner in the case of a collision on the high seas involving loss of life or personal injury. A case recently came before the Permanent Court of International Justice, in which the Court was divided, and it remains to be seen whether the question can be dealt with separately as a matter of maritime law apart from the general question of the criminal jurisdiction of a state over a foreigner.

Effect of Conventions on marine insurance.

As changes in the law on the basis of the Conventions on the limitation of shipowners' liability, maritime mortgages and liens and the immunity of state-owned ships would affect the business of marine insurance, especially as regards the question of insurance against liabilities to third parties, the main provisions of the Conventions are considered in succeeding chapters.

CHAPTER XII

Limitation of Shipowners' Liability

Main provisions of Convention.

The present statutory provisions in force in this country and practically throughout the Empire as regards the limitation of shipowners' liability have already been described in Chapter IV, and the main provisions of the convention on the subject may be summarized as follows:

1. The liability of the owner of a seagoing vessel is limited to an amount equal to the value of the vessel, the freight and the accessories of the vessel, provided that it shall not exceed an aggregate sum equal to £8 per ton of the vessel's tonnage, in respect of (*a*) compensation due to third parties for damage caused by the acts or faults of the master, crew, pilot, or any other person in the service of the vessel, (*b*) compensation due for damage to cargo, goods or property on board the vessel, (*c*) obligations arising out of bills of lading, (*d*) compensation due by reason of a fault of navigation committed in the execution of a contract.

Liability is limited to the value of the vessel, the freight and accessories, without the provision as regards £8 per ton, in respect of (*a*) any remuneration for salvage, (*b*) any contribution of the shipowner in general average, (*c*) obligations arising out of contracts entered into or transactions carried out by the master, acting within the scope of his authority and not expressly authorized or ratified by the owner, away from the vessel's home port, where such contracts or transactions are necessary for the preservation of the vessel or the continuation of the voyage, provided that the necessity is not caused by any insufficiency or deficiency of equipment or stores at the beginning of the voyage.

There is a reservation that liability may not be limited to the value of the vessel, the freight and the accessories in respect of damage caused to works in port, docks and navigable ways or in

respect of the cost of raising wreck, but it is understood that the limit of liability in such cases shall not exceed £8 per ton, except in the case of the expenses of raising wreck.

2. The convention preserves the important provision that there shall be no limitation of liability in respect of obligations arising out of acts or faults committed by or with the privity of the owner of the vessel.

3. There are specific provisions for ascertaining the value of the vessel where limitation of liability is claimed.

(*a*) For claims connected with collisions or other accidents and claims in general average, the valuation shall be according to the condition of the vessel at the time of her arrival at the first port reached after the accident. If before that time a fresh accident, distinct from the first accident, has reduced the value of the vessel, any diminution of value so caused shall not be taken into account in considering claims connected with the previous accident. For accidents occurring during a vessel's stay in port, the valuation shall be according to the condition of the vessel at that port after the accident.

(*b*) In the case of claims relating to the cargo, or arising on a bill of lading, not being claims provided for above, the valuation shall be according to the condition of the vessel at the port of destination of the cargo, or at the place where the voyage is abandoned.

(*c*) In all other cases the valuation shall be according to the condition of the vessel at the end of the voyage.

4. The freight, including passage money, is deemed to be a sum equal to 10% of the value of the vessel at the commencement of the voyage. The accessories are defined as compensation for, or general average contributions in respect of, material damage sustained by the vessel since the beginning of the voyage and not repaired. Payments on policies of insurance are not deemed to be accessories.

5. The various claims connected with a single accident, or in respect of which, in the absence of an accident, the value of a vessel is ascertained at a single port, rank with one another against the amount representing the extent of the owner's liability, regard being had to the order of their liens.

6. Where death or personal injury is caused by the acts or faults of the captain, crew, pilot or any other person in the service of the vessel, the owner of the vessel is liable up to an amount equal to £8 per ton of the vessel's tonnage, over and above the limit

of liability otherwise provided for as explained above. If the claimants are not fully compensated by this amount, they rank, as regards the balance of their claims, with the property claimants against the fund provided by the limitation of liability in respect of claims other than for loss of life or personal injury, regard being had to the order of their liens. There is a reservation as regards applying this special life and personal injuries fund in the case of non-passenger vessels of 300 tons and under, in which case life and personal injury claimants would have to take their chance with property claimants against the sum representing the limit of owners' liability under the general provisions of the convention.

7. The British provision is retained as regards the calculation of a vessel's tonnage. In the case of steamers, it shall be the net tonnage plus the amount deducted from the gross tonnage for engine space, and in the case of sailing vessels it shall be the net tonnage.

8. The monetary units mentioned in the convention mean their gold value, and a foreign debtor may have the right to discharge his debt in national currency according to the rate of exchange prevailing at the date fixed for the ascertainment of the value of the vessel. There is a difficulty in adopting the date upon which payment is made, which is the correct basis, as it would be then impossible for foreign courts to give judgments in the terms of the currency of their own country. The provision provides certainty, but is a departure from strict justice.

9. The limitation of liability does not apply to vessels of war, nor to Government vessels appropriated exclusively to the public service.

Report of the Delegates.

In their report the delegates to the Brussels Conference in 1922 drew attention to some of the objects achieved. The present state of our law, under which the owner is liable without limit to compensate a dock or harbour authority for the expense of raising the wreck of a sunken vessel, has been preserved by the stipulation that any contracting state is free not to allow any limitation of liability in respect of these expenses.

The delegates regarded with satisfaction the adoption of the provision that the freight shall be taken at an amount equal to 10% of the value of the vessel at the commencement of the voyage as avoiding the difficulty connected with the ascertainment of the freight payable in respect of any particular voyage, the inequality where the vessel is not capable of earning any freight or does not happen to be earning any freight on the particular voyage,

and as providing a substantial measure of compensation where the vessel is totally lost, but they thought that the intention should be clearly expressed that the 10% is payable in the case of pleasure yachts, salvage vessels, dredgers and vessels in ballast, etc.

As regards the position of cargo owners, the delegates remarked that it improves their position in several material respects as compared with the existing American and continental law. "For "example," they said, "it provides a fund of 10% of the "value of the undamaged vessel, which is available in any event for "cargo claims. Again, it replaces the present practice of abandon- "ment of the vessel by the payment of a sum from the shipowner "equal to its proved value—a very important advantage to "the cargo owner. Finally the claims to be satisfied out of the "above funds are those arising out of a single accident and not "(as at present) those arising throughout the voyage. Against "these substantial advantages the only thing to be set is the limi- "tation of cargo claims to £8 per ton, a limitation which, in our "opinion, would be practically operative only in comparatively "rare cases."

Conclusions.

The present differences between British and foreign law are very considerable and lead to uncertainty and difficulty. The attainment of a uniform law for international application necessarily involves compromise, but it may be fairly claimed that the advantages to be gained would outweigh any disadvantages. The present inequalities, adversely affecting the owners of British ships as compared with foreign ships, would be removed.

The position of the cargo owner would be improved as regards claims against foreign ships, and it may be fairly maintained that his position in respect of claims against British ships would not be affected to his disadvantage.

Legislation on the basis of the convention would introduce that element of certainty as regards the law which is of an inestimable benefit to those engaged in business, especially where different nationals are concerned, and would promote uniformity, and constitute an important extension of the unification of maritime law upon which the advancement of seaborne commerce largely depends, besides obviating the risk of differences which disturb the relationships of those engaged in it.

As regards its effect on marine insurance, it would tend to stabilize its conditions, especially as regards remedies against third parties which underwriters acquire by subrogation, and it would

enable them to gauge with greater precision the nature and extent of the risks against which the protection of marine insurance is required, but it would not appear to involve any alteration in the present conditions as regards the terms of marine insurance policies or the rules of Protection and Indemnity Associations.

As regards claims for contribution of the shipowner in general average, although the limitation of liability is the value of the ship, freight and accessories as at the time of the ship's arrival at the first port reached after the accident, which would not be likely to affect the amount recoverable in respect of general average alone, it has to be borne in mind that where the shipowner limits his liability, a claim for any contribution of the shipowner in general average has to rank with other claims against the fund created by the limitation of liability connected with a single accident or occurrence, regard being had to the order of their liens.

According to the other convention relating to maritime mortgages and liens, there are certain liens which are to take precedence of the lien which it is proposed to create in respect of the shipowner's contribution to general average, which may affect the amount recoverable where the shipowner claims limitation of liability, but the general intention apparently is that the claim for general average shall rank before claims arising from collisions and other accidents of navigation, for personal injury to passengers and crew, for loss of or damage to cargo, and for damage caused to works forming part of harbours, docks and navigable ways, also claims arising on contracts necessarily made by the master within the scope of his authority away from the vessel's home port.

In the generality of cases, the provision in regard to general average would not affect the usual course of adjustment, but in instances where the shipowner limits his liability, in case of collision or other occurrence and involving a claim for general average, the proposed ranking of claims according to the order of their liens may have an important bearing on general average, and only practical experience can show what would be the effect.

CHAPTER XIII

Maritime Mortgages and Liens

Main provisions of Convention.

The main provisions of this Convention are that a duly registered mortgage, which is effected in accordance with the law of the contracting State to which the vessel belongs, shall be regarded as valid and respected in all the other contracting countries, and that maritime liens be allowed in respect of a number of different claims, including the contribution of a ship in general average for which there is at present no lien in this country.

Preferred mortgages.

Such a " preferred mortgage " shall take precedence of all liens except those anterior in date to the mortgage and certain specified liens, including those for damages arising out of collision or other accidents of navigation, and for general average and salvage. The position of a mortgagee, if the mortgage were duly registered, would be improved by postponing certain liens to his own, and as regards the liens which would take precedence of the mortgage, it should be observed that they are liens which cannot be created at the will of the owner of the vessel, as they arise from accidental circumstances, and can be easily insured against.

By the Marine Insurance Act, 1906, sect. 14 (1), a mortgagee has an insurable interest in the ship to the full amount of the mortgage debt, and according to decisions in certain scuttling cases it would appear that he is in a stronger position if the insurance covering his interest is effected directly by him, instead of his becoming the assignee of an insurance policy effected by the owner, as he thereby only acquires the same rights as were possessed by the owner as the original assured (Marine Insurance Act, 1906, sect. 50, sub-sect. 2), and such a policy might prove to be void by reason of some breach of warranty or improper act done with the privity of the owner.

Dock and harbour authorities.

There is a reservation whereby a contracting State may pass legislation to preserve intact the right of dock, harbour and conservancy authorities to detain and sell the vessel or wreck and to

indemnify themselves out of the proceeds of sale, in priority to other creditors, in respect of damage caused by the fault of the vessel to works in docks and harbours and the cost of raising wrecks.

In both this convention and that relating to the limitation of shipowners' liability, the rights of dock, harbour and conservancy authorities have been fully preserved, and no alteration is suggested in respect of the limitation of liability of such authorities created by the Merchant Shipping (Liability of Shipowners and Others) Act, 1900, whereby they shall not be liable to damages beyond an aggregate amount not exceeding £8 per ton of the tonnage of the largest registered British ship which has entered the dock, harbour and navigable way within the previous five years, where without their actual fault or privity any loss or damage is caused to any vessel or goods on board thereon.

General average lien on ship.

In proposing to create a maritime lien in respect of a ship's contribution in general average the convention extends Admiralty jurisdiction and provides a remedy which is of great importance in the case of a foreign ship.

At common law the shipowner has a possessory lien on the cargo for its share of general average, by virtue of which he is entitled to hold the goods till his lien be satisfied, but as at the time of delivery he is not able to state the amount of the cargo's share the usual procedure is for him to require the signature of the consignee to an average bond, agreeing to pay the proper proportion after the general average adjustment has been prepared, and in addition he may require the payment of a deposit which is usually lodged in a bank in joint names pending the completion of the adjustment.

The owner of cargo has no such corresponding lien on the ship for its share of general average in the case of loss of or damage to cargo falling to be allowed in general average (*The "North Star,"* 1860), but if the shipowner exercises his right of lien on the cargo to enforce the payment of a deposit he is bound to set off the amount of any claim the owner of cargo has against the ship in respect of any loss of or damage to cargo which falls to be allowed in general average (*The "Norway,"* 1865).

The owner of cargo has a personal right of action against the shipowner for the ship's share of any claim in general average for sacrifice of cargo, and against the other owners of cargo for theirs (*Dobson* v. *Wilson*, 1813). It is the duty of the shipowner to enforce his lien for general average contribution against each consignee for the benefit of the owner of goods sacrificed for the common

safety (*Crooks* v. *Allan*, 1879), and he is liable in damages to the owner of goods so sacrificed for delivering the rest of the cargo without taking proper security from the other consignees for their contributions (*Nobel's Explosives Company* v. *Rea*, 1897).

In exceptional cases the Admiralty Court might be called upon to deal with a direct claim by a cargo owner against the shipowner for the ship's share of the loss of or damage to cargo allowable in general average, but the procedure in England and Wales is at present restricted and imperfect, and a foreign ship might be able to leave the country without giving any security in respect of the cargo owner's claim or taking any steps for the adjustment of the general average. In Scotland the right of arrestment to found jurisdiction might give a remedy which is not open to a cargo owner in England and Wales.

The creation of a maritime lien on the ship for its share of general average, as proposed in the convention, removes the present disabilities in this country, and will bring our law into conformity with that of the United States, Germany and Scandinavia. In France, if it cannot be said that there is a "privileged claim" (lien) on the ship, the consignee can at least apply to the Court to enforce bail, but in Holland and other countries no lien or such procedure exists.

The creation of this maritime lien is not likely to affect the present method of adjustment by which no security is given by the shipowner in respect of the ship's share of general average. In the generality of cases, where there has been a sacrifice of cargo, the shipowner has incurred general average expenditure or there has been a sacrifice in respect of the ship, resulting in a balance due from the owners of the cargo to the owner of the ship. Where this is not the case, it has been seen that in this country the shipowner is compelled to take the necessary steps to procure an adjustment and is personally liable for the ship's share of general average.

It is chiefly in connection with foreign ships, where there has been a sacrifice of cargo and there is an amount due from the shipowner, that the proposed lien will afford the cargo owner a protection, the need of which has frequently been experienced to the detriment of the interests of British merchants and underwriters on cargo.

Freight and accessories.

In conclusion it is to be observed that the proposed liens apply not only to the vessel, but also to the freight for the voyage during which the claim giving rise to the lien arises, and to the accessories of the vessel and freight accrued since the

commencement of the voyage. The accessories of the vessel and the freight mean :

(1) Compensation due to the owner for material damage sustained by the vessel and not repaired, or for loss of freight.

(2) General average contributions due to the owner, in respect of material damage sustained by the vessel and not repaired, or in respect of loss of freight.

(3) Remuneration due to the owner for salvage services rendered at any time before the end of the voyage, any sums allotted to the master or other persons in the service of the vessel being deducted.

The provisions as to freight apply also to passage money, and in the last resort, to the sum represented by the payment provided for by Art. 4 of the convention on the limitation of shipowners' liability (*i. e.* 10% of the value of the vessel at the commencement of the voyage).

Payments made or due to the owner on policies of insurance as well as bounties, subventions and other national subsidies are not deemed to be accessories of the vessel or of the freight.

CHAPTER XIV

Immunity of State-owned Ships

The urgent need of reform as regards the immunity of State-owned ships was the subject of an address given recently by Sir Leslie Scott, P.C., K.C., in which he reviewed the position that in civil proceedings in the law courts in this country the Crown is in a privileged position, and he advocated that these privileges should be modified, and that subject to preserving certain interests of the state the Crown should be placed on an equal footing with the subject in respect of legal obligations and court procedure. Need of reform.

The inability of the Crown to be sued in tort works a considerable amount of hardship. Speaking of procedure by Petition of Right, he remarked:

"In theory, the subject cannot sue the Crown at all, or, at any "rate, he cannot do so as a right, but only if the Crown will consent "to be sued. Hence, before any proceedings can be instituted, "it is necessary to obtain the Royal permission, or fiat, that right "be done."

At present no claim can be made by or against the Crown in respect of salvage services rendered by or to a King's ship, although a claim can be made by the officers and crew of such a ship in their private capacity with the consent of the Admiralty in respect of salvage services rendered by them. There is no exception to the rule that salvage claims cannot be made against the Crown, but by the Merchant Shipping (Salvage) Act, 1916, when the King's ship is a tug or a salvage vessel the Crown can claim salvage.

Certain alterations were proposed in the Draft Bill prepared by the Committee on Crown Proceedings as attached to their report published in 1927, which would remedy the matter so far as this

country is concerned, but the question is one of international importance having regard to the entry of maritime states into the ordinary business of shipowning by either owning or operating ships.

Main provisions of Convention.

The convention approved by the Brussels Diplomatic Conference in 1926 provides that the immunity of public vessels in respect of collision, salvage and other damage resulting from navigation shall no longer continue.

The main provisions of the convention are as follows :—

Article 1 reads :

> " Vessels owned or operated by States, cargoes owned by " them, and cargoes and passengers carried on such vessels, " and the States owning or operating such vessels or owning " such cargoes are subject in respect of claims relating to the " management of such vessels or cargoes to the same rules of " liabilities and the same obligations as those applicable to " private-owned ships and cargoes and to the private ownership " and management of ships."

It is further provided that the legal procedure shall be the same as in the case of merchant vessels belonging to or operated by private individuals or public companies and cargoes privately owned.

These provisions, however, are not applicable to warships and other similar vessels or ships owned or operated by the State and employed exclusively at the time on Government and non-commercial service, but whilst such vessels cannot be seized, arrested or detained by any legal process, competent tribunals of the country owning the ships are empowered to hear, without the State being able to avail itself of its immunity, any action brought against the State in respect of (*a*) collisions or other accidents of navigation, (*b*) salvage and general average, (*c*) repairs, supplies, or other contracts relating to the vessel.

Cargo belonging to the State and carried on board such vessels as are mentioned above is placed in the same position as the vessel, and cargo belonging to the State and carried on board merchant vessels, whilst it cannot be seized, arrested or detained, is subject to the ordinary jurisdiction of the courts which have jurisdiction in the case of privately-owned cargo.

APPENDIX

RELEVANT SECTIONS OF STATUTES

MARINE INSURANCE ACT, 1906.

(6 EDW. 7. CH. 41.)

Marine adventure and maritime perils defined.

3. (1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular there is a marine adventure where—

(*a*) Any ship goods or other moveables are exposed to maritime perils. Such property is in this Act referred to as " insurable property " ;

(*b*) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils ;

(*c*) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

" Maritime perils " means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.

Insurable interest defined.

5. (1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

Quantum of interest.

14. (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

When and how policy is assignable.

50. (1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name ; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by indorsement thereon or in other customary manner.

Effect of abandonment.

63. (1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.

Liabilities to third parties.

74. Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.

Right of subrogation.

79. (1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the

subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured. Rule 15.

MERCHANT SHIPPING ACT, 1894.

(57 & 58 VICT. CH. 60.)

PART VIII.

Liability of Shipowners.

Limitation of shipowner's liability in certain cases of loss of, or damage to, goods.

502. The owner of a British sea-going ship, or any share therein, shall not be liable to make good to any extent whatever any loss or damage happening without his actual fault or privity in the following cases; namely,—

(i) Where any goods, merchandise, or other things whatsoever taken in or put on board his ship are lost or damaged by reason of fire on board the ship; or

(ii) Where any gold, silver, diamonds, watches, jewels, or precious stones taken in or put on board his ship, the true nature and value of which have not at the time of shipment been declared by the owner or shipper thereof to the owner or master of the ship in the bills of lading or otherwise in writing, are lost or damaged by reason of any robbery, embezzlement, making away with, or secreting thereof.

Limitation of owner's liability in certain cases of loss of life, injury, or damage.

503. (1) The owners of a ship, British or foreign, shall not, where all or any of the following occurrences take place without their actual fault or privity (that is to say,)

(*a*) Where any loss of life or personal injury is caused to any person being carried in the ship;

(*b*) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board the ship;

(*c*) Where any loss of life or personal injury is caused to any person carried in any other vessel by reason of the improper navigation of the ship ;

(*d*) Where any loss or damage is caused to any other vessel, or to any goods, merchandise, or other things whatsoever on board any other vessel, by reason of the improper navigation of the ship ;

be liable to damages beyond the following amounts ; (that is to say,)

(i) In respect of loss of life or personal injury, either alone or together with loss of or damage to vessels, goods, merchandise, or other things, an aggregate amount not exceeding fifteen pounds for each ton of their ship's tonnage ; and

(ii) In respect of loss of, or damage to, vessels, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, an aggregate amount not exceeding eight pounds for each ton of their ship's tonnage.

(2) For the purposes of this section—

(*See* Merchant Shipping Act, 1906, s. 69.)

(*a*) The tonnage of a steamship shall be her gross tonnage without deduction on account of engine room ; and the tonnage of a sailing ship shall be her registered tonnage :

Provided that there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use which is certified under the regulations scheduled to this Act with regard thereto.

(*b*) (Relating to measurement of foreign ships.)

(*c*) „ „ „ „

(3) The owner of every sea-going ship or share therein shall be liable in respect of every such loss of life, personal injury, loss of or damage to vessels, goods, merchandise, or things as aforesaid arising on distinct occasions to the same extent as if no other loss, injury, or damage had arisen.

Power of courts to consolidate claims against owners, etc.

504. Where any liability is alleged to have been incurred by the owner of a British or foreign ship in respect of loss of life, personal injury, or loss of or damage to vessels or goods, and several claims are made or apprehended in respect of that liability, then, the owner

may apply in England and Ireland to the High Court, or in Scotland to the Court of Session, or in a British possession to any competent court, and that court may determine the amount of the owner's liability and may distribute that amount rateably among the several claimants, and may stay any proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the court thinks just.

Insurances of certain risks not invalid.

506. An insurance effected against the happening, without the owner's actual fault or privity, of any or all of the events in respect of which the liability of owners is limited under this part of this Act shall not be invalid by reason of the nature of the risk.

(As regards ss. 502/509, see Merchant Shipping Act, 1906, s. 71, whereby the word "owner" shall be deemed to include any charterer to whom the ship is demised.)

Part IX.

Wreck and Salvage.

530/534. (Relating to removal of Wrecks).

557. (Relating to salvage by H.M. Ships).

Saving for Liability of Owners and Masters.

Limitation of liability of owner or masters where pilotage is compulsory.

633. An owner or master of a ship shall not be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of that ship within any district where the employment of a qualified pilot is compulsory by law.

(Repealed by Pilotage Act, 1913, s. 15 (3).)

Definitions and Provisions as to Application of Act.

Definitions.

742. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them; (that is to say,)

"Vessel" includes any ship or boat, or any other description of vessel used in navigation;

"Ship" includes every description of vessel used in navigation not propelled by oars.

(*See* Merchant Shipping Act, 1921, s. 1 (1) and (2).)

MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS) ACT, 1898.

(61 & 62 Vict. ch. 14.)

Extension of limitation of liability in certain cases of loss of life, injury or damage.

1. Sections five hundred and two to five hundred and nine inclusive of the Merchant Shipping Act, 1894, shall extend and apply to the owners, builders, or other parties interested in any ship built at any port or place in Her Majesty's dominions, from and including the launching of such ship until the registration thereof under section two of the Merchant Shipping Act, 1894. Provided always that such owners, builders, or other parties interested as aforesaid shall not benefit under this section for a period beyond three months after the launching of such ship.

(*See* Merchant Shipping Act, 1906, s. 70.)

Definition.

4. For the purposes of this Act "ship" shall include every description of vessel used or intended to be used in navigation not propelled by oars and whether completed or in course of completion or construction.

MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS) ACT, 1900.

(63 & 64 Vict. ch. 32.)

Further limitation of liability of shipowner. (57 & 58 Vict. c. 60.)

1. The limitation of the liability of the owners of any ship set by section five hunderd and three of the Merchant Shipping Act, 1894, in respect of loss of or damage to vessels, goods, merchandise, or other things, shall extend and apply to all cases where (without their actual fault or privity) any loss or damage is caused to property or rights of any kind, whether on land or on water, or whether fixed or moveable, by reason of the improper navigation or management of the ship.

Limitation of liability of harbour conservancy authority.

2. (1) The owners of any dock or canal, or a harbour authority or a conservancy authority, as defined by the Merchant Shipping Act, 1894, shall not, where without their actual fault or privity any loss or damage is caused to any vessel or vessels, or to any goods, merchandise, or other things whatsoever on board any vessel or vessels, be liable to damages beyond an aggregate amount not exceeding eight pounds for each ton of the tonnage of the largest registered British ship which, at the time of such loss or damage occurring, is, or within the period of five years previous thereto has been, within the area over which such dock or canal owner, harbour authority, or conservancy authority, performs any duty or

exercises any power. A ship shall not be deemed to have been within the area over which a harbour authority or a conservancy authority performs any duty, or exercises any powers, by reason only that it has been built or fitted out within such area, or that it has taken shelter within or passed through such area on a voyage between two places both situate outside that area, or that it has loaded or unloaded mails or passengers within that area.

(2) For the purpose of this section the tonnage of ships shall be ascertained as provided by section five hundred and three, subsection two, of the Merchant Shipping Act, 1894, and the register of any ship shall be sufficient evidence that the gross tonnage and the deductions therefrom and the registered tonnage are as therein stated.

(3) Section five hundred and four of the Merchant Shipping Act, 1894, shall apply to this section as if the words "owner of a British or foreign ship" included a harbour authority and a conservancy authority, and the owner of a canal or of a dock.

(4) For the purpose of this section the term "dock" shall include wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing-places, and jetties.

(5) For the purposes of this section the term "owners of a dock or canal" shall include any person or authority having the control and management of any dock or canal, as the case may be.

(6) Nothing in this section shall impose any liability in respect of any such loss or damage on any such owners or authority in any case where no such liability would have existed if this Act had not passed.

Limitation of liability where several claims arise on one occasion.

3. The limitation of liability under this Act shall relate to the whole of any losses and damages which may arise upon any one distinct occasion, although such losses and damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under any general or private Act of Parliament, and notwithstanding anything contained in such Act.

MERCHANT SHIPPING ACT, 1906.

(6 Edw. 7. ch. 48.)

Calculation of tonnage of steamship for the purpose of limitation of liability.

69. For the purpose of the limitation under the Merchant Shipping Acts of the liability of owners of ships, docks, or canals, and of harbour authorities and conservancy authorities, the tonnage of a steamship shall be her registered tonnage, with the addition of

any engine-room space deducted for the purpose of ascertaining that tonnage, and the words " registered tonnage with the addition " of any engine-room space deducted for the purpose of ascertaining " that tonnage " shall accordingly be substituted in paragraph (*a*) of subsection (2) of section five hundred and three of the principal Act for " gross tonnage without deduction on account of engine-room."

Liability of shipowners as respects ships launched but not registered. (61 & 62 Vict. c. 14.)

70. The proviso to section one of the Merchant Shipping (Liability of Shipowners) Act, 1898, shall cease to have effect, but that section shall not be construed so as to extend section five hundred and two of the principal Act to the owners of any ship, or any share therein, after the ship has become a foreign ship.

Liability of charterer.

71. Sections five hundred and two to five hundred and nine of the principal Act shall be read so that the word " owner " shall be deemed to include any charterer to whom the ship is demised.

MERCHANT SHIPPING (SALVAGE) ACT, 1916.

(6 & 7 Geo. 5. ch. 41.)

Right of Admiralty to claim salvage in respect of services of certain ships.

1. Where salvage services are rendered by any ship belonging to His Majesty and that ship is a ship specially equipped with salvage plant, or is a tug, the Admiralty shall, notwithstanding anything contained in section five hundred and fifty-seven of the Merchant Shipping Act, 1894, be entitled to claim salvage on behalf of His Majesty for such services, and shall have the same rights and remedies as if the ship rendering such services did not belong to His Majesty.

MERCHANT SHIPPING ACT, 1921.

(11 & 12 Geo. 5. ch. 28.)

Application of Parts I & VIII of the Merchant Shipping Act, 1894, to lighters, &c. (57 & 58 Vict. c. 60.)

1. (1) Notwithstanding anything in section seven hundred and forty-two of the Merchant Shipping Act, 1894 (hereinafter referred to as " the principal Act "), the principal Act shall have effect as though in the provisions of Parts I and VIII thereof (which relate respectively to the registry of ships and to the limitation of the liability of the owners of ships), as amended or extended by any subsequent enactment, the expression " ship " included every description of lighter, barge, or like vessel used in navigation in Great Britain, however propelled :

Provided that a lighter, barge, or like vessel used exclusively in non-tidal waters, other than harbours, shall not, for the purposes of this Act, be deemed to be used in navigation.

(2) In the application of Part VIII of the principal Act to any such lighter, barge, or like vessel as aforesaid, the expression "owner" shall include any hirer who has contracted to take over the sole charge and management thereof and is responsible for the navigation, manning and equipment thereof.

MARITIME CONVENTIONS ACT, 1911.

(1 & 2 GEO. 5. CH. 57.)

Provisions as to Collisions, etc.

1. (1) Where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault: Rule as to division of loss.

Provided that—

(*a*) If, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and

(*b*) Nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed; and

(*c*) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2) For the purposes of this Act, the expression "freight" includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

Damages for personal injuries.

2. Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several:

Provided that nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

Right of contribution.

3. (1) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the persons entitled to any such contribution as aforesaid shall, for the purpose of recovering the same, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Abolition of statutory presumptions of fault. (57 & 58 Vict. c. 60.)

4. (1) Subsection (4) of section four hundred and nineteen of the Merchant Shipping Act, 1894 (which provides that a ship shall be deemed in fault in a case of collision where any of the collision regulations have been infringed by that ship), is hereby repealed.

(2) The failure of the master or person in charge of a vessel to comply with the provisions of section four hundred and twenty-two of the Merchant Shipping Act, 1894 (which imposes a duty upon masters and persons in charge of vessels after a collision to stand by and assist the other vessel) shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default, and accordingly subsection (2) of that section shall be repealed.

5. Any enactment which confers on any court Admiralty jurisdiction in respect of damage shall have effect as though references to such damage included references to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought *in rem* or *in personam*. Jurisdiction in cases of loss of life or personal injury.

Provisions as to Salvage.

6. (1) The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, her crew and passengers (if any), render assistance to every person, even if such person be a subject of a foreign state at war with His Majesty, who is found at sea in danger of being lost, and, if he fails to do so, he shall be guilty of a misdemeanour. General duty to render assistance to persons in danger at sea.

(2) Compliance by the master or person in charge of a vessel with the provisions of this section shall not affect his right or the right of any other person to salvage.

7. Where any dispute arises as to the apportionment of any amount of salvage among the owners, master, pilot, crew, and other persons in the service of any foreign vessel, the amount shall be apportioned by the court or person making the apportionment in accordance with the law of the country to which the vessel belongs. Apportionment of salvage amongst owners, &c., of foreign ship.

General Provisions.

8. No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered, and an action shall not be maintainable under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment: Limitation of actions.

Provided that any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting

the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's ship belongs, or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

Application of Act.

9. (1) This Act shall extend throughout His Majesty's dominions and to any territories under his protection, and to Cyprus :

Provided that it shall not extend to the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) This Act shall not apply in any case in which proceedings have been taken before the passing thereof and all such cases shall be determined as though this Act had not been passed.

(3) The provisions of this Act shall be applied in all cases heard and determined in any court having jurisdiction to deal with the case and in whatever waters the damage or loss in question was caused or the salvage services in question were rendered, and

36 & 37 Vict. c. 66.

subsection (9) of section twenty-five of the Supreme Court of Judicature Act, 1873, shall cease to have effect.

(4) This Act shall apply to any persons other than the owners responsible for the fault of the vessel as though the expression " owners " included such persons, and in any case where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the vessel, this Act shall be read as though for references to the owners there were substituted references to the charterers or other persons for the time being so responsible.

PILOTAGE ACT, 1913.

(2 & 3 GEO. 5. CH. 31.)

Liability of owner or master in the case of a vessel under pilotage.

15. (1) Notwithstanding anything in any public or local Act, the owner or master of a vessel navigating under circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel in the same manner as he would if pilotage were not compulsory.

(2) (Date of application of this section of Act.)

(3) As from the date of the coming into operation of this section, section six hundred and thirty-three of the Merchant Shipping Act, 1894, shall cease to have effect.

HARBOURS, DOCKS AND PIERS CLAUSES ACT, 1847.

(10 & 11 Vict. ch. 27.)

Harbour Master may remove Wreck, &c.

56. The Harbour Master may remove any Wreck or other Obstruction to the Harbour, Dock, or Pier, or the Approaches to the same, and also any floating Timber which impedes the Navigation thereof, and the Expence of removing any such Wreck, Obstruction, or floating Timber shall be repaid by the Owner of the same, and the Harbour Master may detain such Wreck or floating Timber for securing the Expences, and on Nonpayment of such Expences, on Demand, may sell such Wreck or floating Timber, and out of the Proceeds of such Sale pay such Expences, rendering the Overplus, if any, to the Owner on Demand.

Owner of Vessel answerable for Damage to Works.

74. The Owner of every Vessel or Float of Timber shall be answerable to the Undertakers for any Damage done by such Vessel or Float of Timber, or by any Person employed about the same, to the Harbour, Dock, or Pier, or the Quays or Works connected therewith, and the Master or Person having the Charge of such Vessel or Float of Timber through whose wilful Act or Negligence any such Damage is done shall also be liable to make good the same; and the Undertaker may detain any such Vessel or Float until sufficient Security has been given for the Amount of Damage done by the same: Provided always, that nothing herein contained shall extend to impose any Liability for any such Damage upon the Owner of any Vessel where such Vessel shall at the Time when such Damage is caused be in charge of a duly licensed Pilot, whom such Owner or Master is bound by Law to employ and put his Vessel in charge of.

THE DOCKYARD PORTS REGULATION ACT, 1865.

(28 & 29 Vict. ch. 125.)

Interpretation of Terms.

2. In this Act—

The Term "Dockyard Port" means any Port, Harbour, Haven, Roadstead, Sound, Channel, Creek, Bay, or navigable River of the United Kingdom in, on, or near to which Her Majesty now or at any Time hereafter has any Dock, Dockyard, Steam Factory Yard, Victualling Yard, Arsenal, Wharf, or Mooring:

Appointment of Queen's Harbour Masters.

4. The Admiralty may from Time to Time appoint for each Dockyard Port a fit Person to superintend the Execution of this Act, and otherwise to protect the Port, to be called the Queen's Harbour Master for the respective Port.

Power to remove Wreck, &c.

13. The Queen's Harbour Master may remove any Wreck or other Thing being an Obstruction to the Dockyard Port or to the Approaches thereto, and any floating Timber that impedes the Navigation thereof.

Recovery of Expenses of Removal of Wreck, &c.

15. The Expenses incurred by the Queen's Harbour Master in the Removal of any such Wreck or other Thing or Timber, or in the Removal or placing of any such Vessel, shall be repaid by the Owner thereof; and the Queen's Harbour Master may detain, and in case of Nonpayment of the Expenses, on Demand, may sell the Wreck or other Thing, Timber or Vessel, and out of the Proceeds of the Sale pay those Expenses and the Expenses of the Sale, rendering the Surplus (if any) to the Owner on Demand; and any Deficiency may be recovered from the Owner.

Recovery of Expenses by Owner from Master, &c.

16. If the Owner of any Vessel or Thing is in any Case compelled to pay any Penalty, Expenses, Sum of Money, or Costs, by reason of any Act or Omission of the Master of a Vessel or other Person, he shall be entitled to recover the Amount paid by him, with Costs, from the Person who actually committed the Offence or did the wrongful Act in respect whereof the Owner was compelled to make such Payment.

CARRIAGE OF GOODS BY SEA ACT, 1924.

(14 & 15 Geo. 5. ch. 22.)

Application of Rules in Schedule.

1. Subject to the provisions of this Act, the Rules shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Great Britain or Northern Ireland to any other port whether in or outside Great Britain or Northern Ireland.

Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply.

2. There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

3. (Statement as to application of Rules to be included in bills of lading.)

4. (Modification of Article VI of Rules in relation to coasting trade.)

5. (Modification of Rules 4 and 5 of Article III in relation to bulk cargoes.)

Short title, saving, and operation.

6. (1) This Act may be cited as the Carriage of Goods by Sea Act, 1924.

(2) Nothing in this Act shall affect the operation of sections four hundred and forty-six to four hundred and fifty, both inclusive, five hundred and two, and five hundred and three of the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or the operation of any other enactment for the time being in force limiting the liability of the owners of seagoing vessels. 57 & 58 Vict. c. 60.

(3) (Date of application of Act.)

SCHEDULE.

Rules relating to Bills of Lading.

ARTICLE I.

Definitions.

ARTICLE II.

Risks.

ARTICLE III.

Responsibilities and Liabilities.

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

(*a*) Make the ship seaworthy:

(*b*) Properly man, equip, and supply the ship:

(*c*) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV., the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. (Issuing of bill of lading.)

4. Such a bill of lading shall be *primâ facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (*a*), (*b*), and (*c*).

5. (Accuracy of marks, etc.)

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *primâ facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. (Issuing of " shipped " bill of lading.)

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article IV.

Rights and Immunities.

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemptionunder this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(*a*) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship :

(*b*) Fire, unless caused by the actual fault or privity of the carrier :

(*c*) Perils, dangers and accidents of the sea or other navigable waters :

(*d*) Act of God :

(*e*) Act of war :

(*f*) Act of public enemies :

(*g*) Arrest or restraint of princes, rulers or people, or seizure under legal process :

(*h*) Quarantine restrictions :

(*i*) Act or omission of the shipper or owner of the goods, his agent or representative :

(*j*) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general :

(*k*) Riots and civil commotions :

(*l*) Saving or attempting to save life or property at sea :

(*m*) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods :

(*n*) Insufficiency of packing :

(*o*) Insufficiency or inadequacy of marks :

(*p*) Latent defects not discoverable by due diligence :

(*q*) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *primâ facie* evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

6. (Shipment of goods of an inflammable, explosive or dangerous nature.)

Article V.

Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities.

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charterparties, but if bills of lading are issued in the case of a ship under a charterparty they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI.

Special Conditions.

(Relating to particular goods.)

ARTICLE VII.

Limitations on the Application of the Rules.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII.

Limitation of Liability.

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX.

The monetary units mentioned in these Rules are to be taken to be gold value.

SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925.

(15 & 16 GEO. 5. CH. 49.)

22. (1) The High Court shall, in relation to Admiralty matters, have the following jurisdiction (in this Act referred to as "Admiralty jurisdiction") that is to say— Admiralty jurisdiction of High Court.

(*a*) Jurisdiction to hear and determine any of the following questions or claims :—

(i) Any question as to the title to or ownership of a ship, or the proceeds of sale of a ship remaining in the admiralty registry, arising in an action of possession, salvage, damage, necessaries, wages or bottomry ;

(ii) Any question arising between the co-owners of a ship registered at any port in England as to the ownership, possession, employment or earnings of that ship, or any share thereof, with power to settle any account outstanding and unsettled between the parties in relation thereto, and to direct the ship, or any share thereof, to be sold, or to make such order as the court thinks fit ;

(iii) Any claim for damage received by a ship, whether received within the body of a county or on the high seas ;

(iv) Any claim for damage done by a ship ;

57 & 58 Vict. c. 60.

(v) Subject to the provisions of section five hundred and forty-seven of the Merchant Shipping Act, 1894, with respect to the summary determination of salvage disputes, any claim in the nature of salvage for services rendered to a ship (including, subject to the provisions of the said Act, services rendered in saving life from a ship), whether rendered on the high seas or within the body of a county, or partly on the high seas and partly within the body of a county, and whether the wreck in respect of which the salvage is claimed is found on the sea or on the land, or partly on the sea and partly on the land ;

(vi) Any claim in the nature of towage, whether the services were rendered within the body of a county or on the high seas ;

(vii) Any claim for necessaries supplied to a foreign ship, whether within the body of a county or on the high seas, and, unless it is shown to the court that at the time of the institution of the proceedings any owner or part owner of the ship was domiciled in England, any claim for any necessaries supplied to a ship elsewhere than in the port to which the ship belongs ;

(viii) Any claim by a seaman of a ship for wages earned by him on board the ship, whether due under a special contract or otherwise, and any claim by the master of a ship for wages earned by him on board the ship and for disbursements made by him on account of the ship ;

(ix) Any claim in respect of a mortgage of any ship, being a mortgage duly registered in accordance with the provisions of the Merchant Shipping Acts, 1894 to 1923, or in respect of any mortgage of a ship which is, or the proceeds whereof are, under the arrest of the court ;

(x) Any claim for building, equipping or repairing a ship, if at the time of the institution of the proceedings the ship is, or the proceeds thereof are, under the arrest of the court ;

(xi) Any matter concerning booty of war, or the distribution thereof, which may be referred to the court by His Majesty in Council ;

(xii) Any claim—

(1) Arising out of an agreement relating to the use or hire of a ship ; or

(2) Relating to the carriage of goods in a ship ; or

(3) In tort in respect of goods carried in a ship ;

unless it is shown to the court that at the time of the institution of the proceedings any owner or part owner of the ship was domiciled in England :

(*b*) Any other jurisdiction formerly vested in the High Court of Admiralty :

(*c*) All admiralty jurisdiction which, under or by virtue of any enactment which came into force after the commencement of the Act of 1873 and is not repealed by this Act, was immediately before the commencement of this Act vested in or capable of being exercised by the High Court constituted by the Act of 1873.

(2) The provisions of paragraph (*a*) of subsection (1) of this section which confer on the High Court admiralty jurisdiction in respect of claims for damage shall be construed as extending to claims for loss of life or personal injuries.

(3) In this Act, unless the context otherwise requires, the expression "ship" includes any description of vessel used in navigation not propelled by oars.

INDEX

ABANDONMENT,
effect of, 7, 23

ACT OF GOD,
as cause of collision, 21
as cause of damage to harbours, docks and piers, 27
as exception to common law liability of shipowner as carrier, 40, 114

ADMIRALTY JURISDICTION,
origin of, 11
in England and Wales, 11
in Scotland, 15
in Dominions, 131
in respect of general average, 141

ADMIRALTY LAW,
differences between common law and, 22, 28
division of loss when both vessels to blame, 28
history of rule of division of loss when both vessels to blame, 29
no difference between England and Scotland as regards, 30

AGENCY,
as part of collision damages, 61

ANCHOR,
collision with, 81

ARRESTMENT,
of the person, 11, 12, 14
of property, 11, 12, 14
to found jurisdiction in Scotland, 15, 16, 141
on dependence of action in Scotland, 15, 16
in security, 16
in execution, 16
report of Lord Chancellor's Committee (1927) on, 18
report of Royal Commission (1927) on, 18

AVERAGE ADJUSTER,
remit of assessment of collision damages to, 18
employment of, to prepare claim for collision damages, 19, 61

BARGE,
meaning of word, 1

BREACH OF CONTRACT,
liabilities arising from, 3, 114
insurance against shipowners' liability for breach of contract of carriage, 117
insurance against shipbuilders' liability under building contract, 121

BUILDERS' RISKS CLAUSES,
form of collision clause in, 85, 109
additional clause required if policies are in name of owners, 85
inclusion of protection and indemnity clause in, 107, 109

BUILDING CONTRACTS,
form of, 119
insurance of risks arising under, 85, 109, 119, 120

CARGO, loss of or damage to,
rule of division of loss applies to claim for, 31, 33
illustrations of rule of division of loss, 35
statutory limitation of liability of shipowner for, 41
illustrations of claim for, when liability of shipowner is limited, 43
assessment of claim for, 61
enforcement of claim for,
when both vessels in collision belong to same owner, 90
when both vessels to blame for collision, 90
illustrations of claim for, on basis of cross liabilities, 98
position of claimant for, under convention for limitation of shipowners' liability, 137

CARGO, state-owned,
convention relating to, 144

CARRIER,
insurable interest of, 2
insurance against liability of, 5, 116
classification of risks applicable to carriage of goods by sea, 116

CHARTERER,
insurance against liability of, 3
liable for collision if he provides crew, 22
application of collision clause to, 78

COLLISION,
damages payable by ship in fault not recoverable under ordinary policy on ship, 3
meaning of word in marine insurance law, 20, 80
extent of damages arising from, 21
various causes of, 21
persons liable for, 22
criminal liability for, 25, 133
persons entitled to recover damages for, 25
regulations for preventing, 26
due to hostilities or warlike operations, 87

COLLISION CLAUSE,
origin and development of, 71
early form of, 72
restriction of indemnity under, 72, 74, 75, 79, 82
liability for costs under, 72
application of principle of single liability to, 73
proviso or exception clause, 74, 83
sister-ship clause, 75
only affords partial indemnity for collision liabilities, 75, 79
Institute form of, 76
is a separate contract, 77
applicable to each collision, 77
meaning of "any other person or persons," 78
actual contact necessary to bring clause into operation, 79
meaning of "any other ship or vessel," 80
meaning of "become liable to pay and shall pay," 81
form of clause in:
Lake Time clauses, 84
Dutch Hull form, 85
Port Risk clauses, 85
Builders' Risks clauses, 85
liability under, where hull and machinery are separately owned and insured, 85
cross liabilities, basis of adjustment under, 95
apportionment of costs under, 100

COMMON LAW,
differences between Admiralty law and, 22, 28
applied to claims for loss of life and personal injury, 26
liability of shipowners at, 40, 114
exceptions to liability of shipowner at, 40, 114

CONSEQUENTIAL DAMAGES,
arising from collision, 49, 74
arising from breach of contract, 120
arising under guarantee clause in building contract, 121

CONTACT,
between ships not necessary to give rise to liability for damages for negligent navigation, 20

CONTRIBUTORY NEGLIGENCE,
effect of, in case of collision, 22, 28

CONVENTIONS (*see* MARITIME CONVENTIONS).

COSTS,
not recoverable under policy against liabilities unless specified, 6, 118
should not be incurred without concurrence of insurers, 19
payable in addition to amount of limited liability, 43
how payable when both vessels to blame for collision, 43
recoverable by special provision in collision clause, 72
apportionment under collision clause, 100

CREW,
wages of, as part of collision damages, 53, 57
cost of repatriation of, as part of collision damages, 53, 54
loss of personal effects of, 63

CRIMINAL LIABILITY FOR COLLISION,
involving loss of life and personal injury, 25
proposed maritime convention relating to, 133

CROSS LIABILITIES,
principle applied to collision clause, 73
cannot be adopted when limited liability applies, 81, 91
illustrations of adjustment of claims under collision clause on basis of, 95

CROWN PROCEEDINGS,
report of Committee on, 128

DAMAGES ARISING FROM COLLISION,
assessment of, 18, 65
extent of, 21, 50
division when both vessels to blame, 28, 31
single liability for, 31
measure of, 49
direct, 49
consequential, 49
remoteness of, 49
nature of, 50
illustrations of assessment of, 65

DEMURRAGE (loss of time),
how computed as part of collision damages, 57
how dealt with when two repairs effected concurrently, 60, 66, 67
recoverable by reason of sister-ship clause, 90
recoverable by reason of cross liability section of collision clause, 95

DEVIATION,
insurance against liabilities arising from unauthorized, 5
effect on contract of carriage, 115

DISBURSEMENTS, AVERAGE,
insurance on, 119

DIVISION OF LOSS WHEN BOTH VESSELS TO BLAME,
effect on rights and liabilities of insurers, 26
history of rule of, 29
equal division of loss, 30
in proportion to degree of fault, 31
applies to cargo, 30, 33
in other countries, 34
illustrations on basis of single liability, 34

DOCK,
liability for damage to, 27, 47
limitation of liability for damage to, 41, 47
limitation of liability of owner of, 48
meaning of word, 48
convention relating to limitation of shipowners' liability and damage to, 134
convention relating to maritime mortgages and liens and liability for damage to, 139

DOMINION LEGISLATION,
effect of equality of status on, 129
report of Conference on operation of, 130

DRYDOCKING,
how cost is treated when two repairs effected concurrently, 56, 66, 67

DUTCH HULL FORM,
form of collision clause in, 85

ENGINEER (*see* SHIPBUILDER).

EXCESS CLAUSE,
covers collision liabilities, 86

EXCHANGE,
rate adopted for collision damages, 64
rate adopted for convention relating to limitation of shipowners' liability, 136

FAULT,
presumption of, in case of collision, 26, 32

FAULT AND PRIVITY,
as bar to limitation of liability, 41, 42, 47
convention on limitation of shipowners' liability and, 135

FISHING,
loss of, as part of collision damages, 59

FISHING NETS,
loss of, as result of collision, 81

FOREIGN SHIPS,
provision of bail in case of, 19
statutory limitation of liability and, 42
damages recoverable from owners of, 42

FREE OF CAPTURE AND SEIZURE CLAUSE (F.C.&S.).
effect on collision clause, 87

FREIGHT,
loss of, 51, 52, 54, 56, 58
deductions from gross, 51, 57
loss of ulterior, 57
liability for collision damages attaching to, 86

FREIGHT COLLISION CLAUSE,
form of, 86

FORUM NON CONVENIENS,
principle of, 17

GAS FLOAT
not a "ship" or "vessel," 1

GENERAL AVERAGE,
effect of convention on limitation of shipowners' liability on, 135, 138
no lien on ship at common law for its proportion of, 140
creation of lien under convention on maritime mortgages and liens for ship's proportion of, 140
jurisdiction of Admiralty Court in respect of, 141
effect of right of arrestment to found jurisdiction in Scotland on claims for, 141
creation of lien under convention on maritime mortgages and liens for contributions due to shipowner, 142

HARBOUR,
liability for damage to, 27
limitation of liability for damage to, 41, 47

HARBOUR AUTHORITIES,
responsibilities as regards wrecks, 23
limitation of liability of, 48

HOSTILITIES,
collision due to, 87

IMMUNITY OF STATE-OWNED SHIPS,
convention relating to, 127, 128, 143
report of Crown Proceedings Committee on, 128
need of reform in respect of, 143

IMPERIAL CONFERENCE,
report on maritime conventions, 128
report on Dominion Legislation, 129

INEVITABLE ACCIDENT,
as cause of collision, 21

INSCRUTABLE FAULT,
as cause of collision, 21

INSURANCE,
purpose of marine, 2
statutory authority to insure against liabilities to third parties, 2
policy on property does not protect assured against liability for damage done to other property, 3
against liabilities is a separate contract, 3
general principles applicable to insurances against liabilities, 4
increased value policy on ship with ancillary clauses is not insurance against liabilities, 5
policy on goods does not fully protect carrier in respect of his liability to their owner, 5
against liabilities for breach of contract, 6, 118
against liabilities does not cover costs, 6
no community of contract between insurer and third party, 6
effect of conventions on, 8, 137

INTEREST,
payable in addition to amount of limited liability, 43
on collision damages, 52, 54, 64, 105

LAKE TIME CLAUSES (HULLS),
form of collision clause in, 84

LANDING STAGE,
not a "ship" or "vessel," 1

LIABILITIES,
in respect of maritime property generally, 1
statutory authority to insure against, 2
measure of indemnity in case of insurance against, 2
classification of, 3
arising under statutory powers, 3, 27
arising from breach of contract, 3, 114
general principles applicable to insurances against, 4, 117
statutory exceptions to shipowners' common law, 40, 115
of shipowner as carrier, 40, 47, 114, 127
for damage occurring during performance of contract, 114
insurance against liability of shipowner as carrier, 117
form of insurance against liability of shipowner as carrier, 118
what, usually insured by protection and indemnity associations, 87, 111
of shipbuilder to sub-contractor, 119

LIENS (*see* MARITIME LIENS).

LIGHTER,
meaning of word, 1
statutory exception of "fire" does not apply to, 118

LIGHTERMAN,
insurance against liability of, 4, 119
liability as common carrier, 118
insurance on cargo without recourse against, 118

LIMITATION OF LIABILITY,
history of statutory, 41
of shipowner under Merchant Shipping Acts, 41, 47, 127
of shipowner under Carriage of Goods by Sea Act, 1924, 47, 116
applicable to each distinct occasion, 42
scope of shipowners' statutory, 42
of charterer, 42
of shipbuilder, 42
of dockowner, 48
of ship repairer, 48
in foreign countries, 46, 127
illustrations of, 43
proposed changes in law of, 46, 127
effect on cross liabilities section of collision clause, 91
convention relating to shipowners', 127, 134
conclusions on convention relating to shipowners', 137

LOSS OF LIFE,
damages for, 25
position of claimant when both vessels to blame, 33
illustrations of claim when both vessels to blame, 37
statutory limitation of liability of shipowner for, 41
illustrations of claim when liability of shipowner is limited, 43
basis of assessment of claim for, 63
enforcement of claims for, when both vessels are to blame for collision, 90
illustrations of claim for, when both vessels are to blame for collision, 98
illustration of claim recovered in full from one of two wrong-doing ships, 99
proposed maritime convention relation to passengers', 132
convention relating to limitation of shipowners' liability for, 135

MARITIME CONVENTIONS,
uniformity of law obtained by, 125
relating to division of loss when both vessels to blame for collision, 126
relating to bills of lading, 126
relating to limitation of shipowners' liability, 127, 134
relating to maritime mortgages and liens, 128, 139
relating to immunity of State-owned ships, 128, 143
ratification of, 129

MARITIME CONVENTIONS—*continued.*
reciprocity in the matter of, 131
relating to loss of life and personal injury of passengers, 132
relating to criminal liability for collisions, 133
effect on marine insurance of, 133, 137
report of delegates to Brussels Conference in 1922 on, 136

MARITIME LAW,
means of obtaining uniformity in, 132

MARITIME LIENS,
development of, 14
meaning of, 15
none in respect of ships owned or managed by State, 15, 23
contingent on ship surviving collision, 24
convention relating to, 127, 128, 139
none on ship for its proportion of general average, 140
creation of lien on ship for its proportion of general average by convention relating to maritime mortgages and liens, 140
in respect of freight and accessories under convention relating to maritime mortgages and liens, 141

MARITIME PERILS,
Meaning of term, 2

MORTGAGES,
convention relating to, 127, 128, 139
insurable interest relating to, 139

NEGLIGENCE,
as cause of collision, 21

PASSENGER,
basis of assessment for loss of personal effects of, 63
basis of assessment for loss of life or personal injury of, 63
proposed convention relating to loss of life and personal injury of, 132

PERMANENT REPAIRS,
as part of collision damages, 55

PERSONAL EFFECTS,
basis of assessment for loss of, 63

PERSONAL INJURY,
damages for, 25
position of claimant when both vessels to blame, 33
statutory limitation of liability of shipowner for, 40
basis of assessment of claim for, 63
enforcement of claim for, when both vessels are to blame for collision, 90
illustration of claim recovered in full from one of two wrong-doing ships, 99
proposed convention relating to passengers', 132
convention relating to limitation of shipowners' liability for, 135

PIER,
liability for damage to, 27, 47
limitation of liability for damage to, 41, 47
convention relating to limitation of shipowners' liability and damage to docks, piers, etc., 134
convention relating to maritime mortgages and liens and liability for damage to, 139

PILOT,
shipowner responsible for collision caused by negligence of, 23

PORT RISK CLAUSES,
form of collision clause in, 85, 109
inclusion of protection and indemnity clause in, 107, 109

PROCEDURE IN COLLISION ACTIONS, 18

PROCEEDINGS *IN PERSONAM*,
nature of, 12

PROCEEDINGS *IN REM*,
nature of, 12
when competent, 13
advantages of, 13
can now be instituted in respect of claims for loss of life and personal injury, 33

PROFIT,
loss of, how computed as part of collision damages, 57

PROTECTION AND INDEMNITY ASSOCIATIONS,
risks covered by, 87, 111

PROTECTION AND INDEMNITY CLAUSE,
purpose of, 106
terms of, 107
construction of, 109
risks covered by, 110

PROVISO OR EXCEPTION CLAUSE,
introduction of, 74, 83

RECONVENTION,
rule of, 17

REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 26, 32

REPAIRS TO SHIP,
temporary, as part of collision damages, 54
permanent, as part of collision damages, 54

RESTITUTION,
basis of measure of damages, 49

RUNNING DOWN CLAUSE (*see* COLLISION CLAUSE).

SALVAGE,
as part of collision damages, 54
no claim against King's ship for, 143
claim of King's ship for, where it is a tug or salvage vessel, 143

SCOTLAND,
Admiralty jurisdiction in, 15
maritime law of, same as in England, 15, 30
assessment of collision damages in, 18, 65

SHIP,
as instrument of damage to other property, 1, 22
meaning of word, 1, 80
owned or managed by sovereign state is not subject to ordinary rules of law, 15, 23
liability of ship apart from owner, 24
illustrations of claim when liability is limited, 43
total loss of, 51
constructive total loss of, 53
partial injury to, 54
repair of, 55, 56
division of cost of dry docking when two repairs effected concurrently, 55
depreciation for damage to, 55
seaworthiness of, 115
convention relating to immunity of State-owned, 127, 128, 143

SHIPBUILDER,
liability of, for negligent navigation of ship, 23
limitation of liability of, 42
clauses covering risks of, 85, 109
liability to other contractor, 119
insurance against liability to other contractor, 120
liabilities under guarantee clause in building contract, 121
insurance against guarantee clause in building contract, 121

SHIPOWNER,
liabilities of, in respect of maritime property generally, 1
liability of, as employer of wrong-doer, 22
exceptions to liability of, in absence of contributory negligence of crew, 23
divestment of responsibility by abandonment in case of wreck, 23
liability of, for damage done by tug towing ship, 24
common law liability of, 40, 114
exceptions to common law liability of, 40, 114
statutory limitation of liability, 41, 115
scope of statutory limitation of liability of, 42
illustrations of statutory limitation of liability of, 43
liability of, as carrier, 47, 114
liability of, for damage to docks, piers and wharves, 47
convention relating to limitation of liability of, 134

SHIP REPAIRER,
liability of, 23, 48, 122
cannot limit liability except as "dock-owner," 48, 122
insurance against risks of, 122

SINGLE LIABILITY,
rule of, 31, 73
illustrations of division of loss on basis of, 34
principle applied to collision clause, 73
basis of adjustment where limited liability applies, 82, 91
illustrations of adjustment of claims under collision clause on basis of, 94

SISTER-SHIP CLAUSE,
introduction of, 75
demurrage recoverable by reason of, 90
does not affect rights of cargo owner, 90

STATUTORY POWERS,
liabilities arising under, 3, 27

SUBROGATION,
right of, 7, 25, 26

SUE AND LABOUR CLAUSE,
does not apply to collision clause, 73

SUPERINTENDENCE,
fees as part of collision damages, 56

SURVEY,
fees as part of collision damages, 56
in case of collision, 19

TEMPORARY REPAIRS,
as part of collision damages, 54

TONNAGE OF SHIP,
calculation of, under:
Merchant Shipping Acts, 43
convention relating to limitation of shipowners' liability, 136

TORT,
meaning of, 3
liabilities arising from, 3

TORT-FEASOR, JOINT,
position under Admiralty law and common law, 28, 33

TRANSPORTING CONTRACTOR,
liability of, for negligent navigation of ship, 23

TUG AND TOW,
owner of tow may be liable for negligent navigation of tug, 24
right of owner of tow to recover under collision clause, 79

VESSEL,
meaning of word, 1, 80

WARLIKE OPERATIONS,
collision due to, 87

WARSHIPS,
no maritime lien in respect of, 15, 23
convention relating to limitation of shipowners' liability does not apply to, 136
convention relating to immunity of State-owned ships and legal proceedings in respect of, 144

WHARVES (*see* PIERS).

WRECK,
divestment of responsibility of shipowner by abandonment in respect of cost of removal of, 23, 27
liability of harbour authority in respect of, 23
cost of raising wreck as part of collision damages, 52
insurance against cost of raising, 108
convention relating to limitation of shipowners' liability for cost of raising, 135
convention relating to maritime mortgages and liens and liability for cost of raising, 140